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ABSTRACT

This report is the third of four volumes presenting results of the Comparative Study of Case Review Systems Phase II--Dispositional Hearings, focusing on implementation of the dispositional hearing requirement of P. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. This volume of the study presents the results of a state statutory survey of the laws in all fifty states and the District of Columbia which most closely resemble the P. L. 96-272 dispositional hearing requirement. In addition, it analyses a number of legal issues that have arisen during the implementation of this provision. The aim of the study was to provide information useful to state agencies and courts on how the hearings are functioning. On a limited basis, primarily through analysis of hearing decisions, the issue of case outcomes also is addressed. Following an introduction which describes the study background and methodology, chapters cover (1) legal issues related to dispositional hearings and (2) state statutory survey results. An extensive appendix summarizes each of the fifty states' and the District of Columbia's state statutory provisions closest to P. L. 96-272 dispositional requirements. Each summary includes the following topical areas: procedure, coverage, procedural safeguards, scheduling, authority of court, and decision required. (DST)

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COMPARATIVE STUDY OF STATE CASE REVIEW SYSTEMS PHASE II-- DISPOSITIONAL HEARINGS

DRAFT

Legal Issues and State Statutory Survey

Volume III

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TABLE OF CONTENTS

Chapter		Page
	ACKNOWLEDGEMENTS	i-1
	EXECUTIVE SUMMARY	ii-1
1	INTRODUCTION	1-1
	1. 1 Study Background and Related Studies	1-2
	1. 1. 1 The Spread of Judicial Review in the 1970's and 1980's	1-3
	1. 1. 2 Results of the Westat/ABA National Telephone Survey	1-5
	1. 1. 3 Studies of the Impact of Judicial Foster Care Review	1-6
	1. 1. 4 Summary and Implications for Current Research	1-7
	1. 2. Study Methodology	1-8
	1. 2. 1 The Study Context	1-9
	1. 2. 2 The Study Parts	1-9
	1. 2. 3 The Legal Analysis	1-9
	1. 2. 4 The State Statutory Survey	1-10
2	DISPOSITIONAL HEARINGS: LEGAL ISSUES	
	2. 1 Introduction	2-1
	2. 1. 1 What are the components of the case review system?	2-3
	2. 1. 2 Purposes of the Dispositional Hearing Requirements	2-6
	2. 2. Legal Issues	2-9
	2. 2. 1 Who may conduct the dispositional hearing?	2-9
	2. 2. 2 What procedural safeguards must be in place at the dispositonal hearing?	2-14
	2. 2. 3 What is meant when P.L. 96-272 says the dispositional hearing "shall determine the future status of the child?"	2-22
	2. 2. 4 What is the meaning of the permanent placement alternatives to be considered at the dispositional hearing?	2-30
	2. 2. 4.1 Continuation in foster care for a specified period	2-31
	2. 2. 4.2 Foster care on a permanent or long-term basis	2-32
	2. 2. 4.3 Legal guardianship	2-35
	2. 2. 5 What is the meaning of the requirement that dispositional hearings be held within eighteen months and periodically thereafter?	2-38

2.2.6 Which children are covered by the dispositional hearing requirement? 2-43

3 STATE STATUTORY SURVEY RESULTS 3-1

3.1 Procedure 3-2
3.1.1 Proceedings in which a permanent future status must be chosen for the child 3-6
3.1.2 Periodic judicial proceedings with a permanency planning focus 3-6
3.1.3 Periodic judicial proceedings to "review" all children under court jurisdiction 3-7
3.1.4 Judicial proceedings to extend foster care order; order expires at a specified point in time unless action is taken to extend it 3-7
3.1.5 Report only or report plus judicial discretion to schedule a hearing 3-8
3.1.6 Judicial hearings on motion of a party 3-8
3.1.7 Periodic review by foster care review boards or other court-appointed or approved bodies 3-8
3.1.8 No statutory proceeding 3-9

3.2 Decision Required 3-9
3.2.1 Proceedings in which a permanent future status must be chosen for the child 3-10
3.2.2 Periodic judicial proceedings with permanent planning focus 3-14
3.2.3 Periodic judicial proceedings to "review" children under court jurisdiction 3-16
3.2.4 Judicial proceedings to extend foster care; order expires specified time unless action is taken to extend it 3-16
3.2.5 Report only or report plus judicial discretion to schedule a hearing 3-17
3.2.6 Judicial hearings on motion of a party 3-17
3.2.7 Periodic review by review board or other court-appointed or approved bodies 3-18
3.2.8 No statutory proceeding 3-18
3.2.9 Special problems with legal criteria for decisions 3-18

3.3 Authority 3-19
3.3.1 Overview of statutory authority to order decision implemented 3-21
3.2.2 Termination of parental rights 3-23
3.2.3 Guardianship and long-term foster care 3-24
3.2.4 Adoption 3-24
3.2.5 Authority to order a specific placement 3-25
3.2.6 Services 3-27
3.2.7 Additional orders 3-28

3. 4		Procedural Safeguards	3-28
3. 4. 1		Is it clear that a true hearing is required by the law rather than a paper review (no parties present) or an ex parte review (only the agency present)?	3-31
3. 4. 2		Are parties required to be notified of the hearing? By what means and how far ahead of the hearing? Must parents be warned of the possible results of the hearing in the notice?	3-32
3. 4. 3		Who are parties at the review or dispositional hearing? Are parents, older children and long-time foster parents allowed to participate?	3-34
3. 4. 4		Is a report on the case required to be filed with the court prior to the proceeding? Are the parents entitled to an advance copy? Is the report admissible in evidence?	3-35
3. 4. 5		What is the degree of formality of the hearing? Is hearsay admissible? Do parties have the right to present and cross-examine witnesses? May they subpoena witnesses? What rules of evidence apply?	3-38
3. 4. 6		Are the parties, particularly the parent and child, entitled to counsel at the proceeding? Must counsel be furnished at state expense if the parents are indigent?	3-40
3. 4. 7		Must a verbatim record be made of the proceedings?	3-44
3. 4. 8		Must the court issue written findings and an order at the hearing?	3-45
3. 4. 9		May the decision be appealed?	3-47
3. 5		Coverage	3-47
3. 5. 1		Children who may be excluded because of lack of mandated hearing	3-48
3. 5. 2		Voluntary placements	3-48
3. 5. 3		Children voluntarily relinquished by parents or whose parental rights have been terminated	3-51
3. 6		Timing	3-52
3. 6. 1		Time frame	3-52
3. 6. 2		Scheduling	3-55
3. 7		Court-appointed or approved bodies	3-56

Appendix

A Summary of State Statutory Provisions Closest to P.L. 96-272 Dispositional Hearing Requirements

TABLE OF CONTENTS

Table		Page
3-1	Statutory Procedures Most Closely Approximating P.L. 96-272 Dispositional Hearing Requirement in Use by States	3-3
3-2	Numbers of States in Which Court or Court-Appointed or Approved Bodies Have Certain Statutory Authority	3-22
3-3	Number of States with Review Procedures Covering Voluntarily and Involuntarily Placed Children	3-49
3-4	Time Within Which a State's Proceeding Most Closely Approximating P.L. 96-272 Dispositional Hearing Requirement Must Take Place	3-53
3-5	Time Within Which a State's Proceeding Most Closely Approximating Subsequent Dispositional Hearings Must Take Place	3-55

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EXECUTIVE SUMMARY

Introduction

Under the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Congress outlined a case review system which includes a review of the status of each child in foster care by a court or administrative body at least every six months and a dispositional hearing by a court or court-appointed/approved body within 18 months of a child's placement and periodically thereafter. The study of which this volume is a part focuses on the dispositional hearing requirement of the case review system and addresses three major questions:

(1) What is the response of States to P.L. 96-272 with regard to dispositional hearings?

(2) How are dispositional hearings operating in the States?

(3) What are the advantages, problems and issues surrounding the implementation of the hearings?

Study Activities

This volume of the study presents the results of a state statutory survey of the laws of all fifty states and the District of Columbia which most closely resemble the P.L. 96-272 dispositional hearing requirement. In addition, it presents an analysis of a number of legal issues that have arisen during the implementation of this provision.

Other volumes report on two additional parts of the study, a national exploratory telephone survey about the hearings in fifty states and Washington, DC, and an in-depth study of the eighteen month dispositional hearings in Arizona, Louisiana, Montana, North Dakota, San Francisco County (California), South Carolina, Virginia and Washington, DC.

Problems in Interpretation of the Dispositional Hearing Requirement

An analysis of the legislative history of the Act was conducted in an attempt to determine answers to some frequently asked interpretive problems raised by the P.L. 96-272 dispositional hearing requirement. That requirement provides:

> "[W]ith respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis)." Social Security Act §475(5)(C); 42 U.S.C. §675(5)(C) (Supp. V 1981).

Three primary purposes were found for the dispositional hearing requirement: 1) to provide time limited decision-making with respect to the future status, or permanent home for each child in foster care; 2) to protect the rights of the parents with respect to that decision-making process; and 3) to ensure some measure of external accountability for agency decisions and actions regarding a future home for the child.

The major interpretive questions identified and conclusions reached are as follows:

1. Who may conduct the dispositional hearing?

While it is clear that states may use courts or court-appointed or approved bodies questions have arisen whether states may use magistrates, referees, and the like. Questions have also arisen about the relationship of the court to the decision-making body.

The analysis concludes that the decision-making body must have three characteristics: impartiality, the ability to provide a hearing comporting with due process

requirements, and the ability to provide an effective check on agency decision-making by holding the agency accountable. It concludes that referees, commissioners, special masters or magistrates employed by the courts will generally have these characteristics. However, doubt is expressed about the ability of some court-appointed or approved bodies to meet these requirements when they include agency staff or are selected by the agency, when they lack law-trained members able to provide due process proceedings, and when they do not have authority to issue decisions binding on the agency.

2. What procedural safeguards must be in place at the dispositional hearing?

The analysis concludes that at least those "basic components" of procedural due process which have been identified in a series of Supreme Court decisions as necessary when the government deprives a citizen of life, liberty or property must be provided at dispositional hearings. They include: 1) adequate notice of the basis for the proceedings; 2) a neutral decision-maker; 3) an opportunity to make an oral presentation to the decision-maker; 4) an opportunity to present evidence or witnesses to the decision-maker; 5) a chance to confront and cross-examine evidence and witnesses used against the individual; 6) the right to have an attorney present the individual's case to the decision-maker; and 7) a decision based on the record with a statement of the reasons for the decision. Other elements which may be required in this context include: the right to subpoena witness, the right to pre-trial discovery and the right to a transcript.

In addition, the analysis concludes that a true "hearing" must be made available to the parties and not merely a presentation of papers or agency views to the court without an opportunity for the parents and the child or child's representative to be present and present their case.

3. What is meant when P.L. 96-272 says the dispositional hearing "shall determine the future status of the child?"

The most important aspect of this question is whether the court or court-appointed body must actually make a decision about the child's future at the time of this hearing or whether the child may simply be continued in indefinite foster care with a goal of some other placement in the future? The analysis concludes that Congress intended that a decision actually be made about the child's future status at the dispositional hearing and that the

child not simply be continued in foster care following the dispositional hearing even with a case plan goal. In other words, this was to be a "fish or cut bait hearing" in which a child would be returned home or after which termination and adoption proceedings would commence unless a brief (generally not to exceed six months) additional stay in foster care was indicated in order to allow parents to resume care of the child.

This question is a particularly important one because the national telephone survey results (Volume I) indicated that while judges believed the hearings resulted in a "decision on what should be the permanent plan for the child," this often meant, at best, ensuring that the agency had a case plan goal at that time rather than choosing a specific alternative for the child's future status which would be put into place right away. The analysis of a sample of individual case records in the eight study states (Volume IV) also found that often there was not a decision about the child's permanent future status at the hearing. In forty-six percent of the cases in which there was some form of legal proceeding resembling a dispositional hearing, the child was simply continued in foster care for an indefinite or specified period as a result of the hearing. This was in addition to some thirteen percent of children for whom permanent foster care was specifically chosen as the plan of choice. These factual findings on implementation reflect the importance of this interpretive question.

4. What is the meaning of the permanent alternatives to be considered at the dispositional hearing? The analysis reaches the following conclusions:

a. Continuation in foster care for a specified period -- It appears Congress may have intended a limit of six months on extending foster care beyond eighteen months, unless it was possible to point to some very specific factor justifying an extension beyond that point. Further, there must be some reason to believe return home is a real possibility before using this option.

b. Foster care on a permanent or long term basis -- It appears Congress intended this option as a choice of last resort, and one to be used only on the basis of the child's special needs or circumstances. Further, this term may mean a stable and specially protected relationship with a single set of parents for the child's entire minority - not long term continuation in temporary foster care in which frequent shifts in homes may be expected.

c. Legal guardianship -- This term is referred to elsewhere in the Act as a permanent placement option. It generally means an option similar to probate guardianship in which the responsible adult(s) assume decision-making authority for the child free of agency authority or intervention.

5. What is the meaning of the requirement that dispositional hearings be held within eighteen months and periodically thereafter?

The analysis concludes that the measuring date for the deadline for the dispositional hearing must be the date the child was removed from home, not the date of a later court order, for example. Nothing prevents a state from setting a hearing date earlier than eighteen months. States may set the date for further hearings at the time they choose.

6. Which children are covered by the dispositional hearing requirement?

The analysis concludes that children voluntarily placed in care by their parents must either receive dispositional hearings at eighteen months or not be continued in voluntary care beyond that time. Providing hearings for these children will almost surely require legislation because in most states there is no court jurisdiction over their cases and court jurisdiction can be granted only by statute. Children whose parental rights have been terminated or whose parents have surrendered parental rights are also covered by the requirement until the time of adoption placement. Once placed for adoption pursuant to an interlocutory decree the requirement of further dispositional hearings ceases. HHS regulations suggest that no further dispositional hearings are required for children in long-term foster care so long as the child is in a home setting rather than an institution, there is some additional protection to ensure permanence for the arrangement such as a court order or written agreement with the foster parents, and the court has sanctioned the specific arrangements.

State Statutory Survey Results

An analysis was made of the state statutes of each of the fifty states and the District of Columbia which most closely resemble the P.L. 96-272 dispositional hearing requirements. This analysis is not a measure of compliance with the requirement, as in many states certain procedures may be followed without a statutory requirement.

Types of Statutory Provisions/Types of Decision Required

It was found that most states have not enacted new legislation tracking the P.L. 96-272 dispositional hearing requirement. Instead, a large majority of states have continued to use an existing statutory mechanism, perhaps modifying it slightly. These statutory provisions fall under the several broad categories described below. Only the first category requires a decision on the future status of the child from among stated alternatives at a specified point in time. The large majority of states still do not require by statute a decision on the child's future status at a specified point in time.

1. Proceedings in which a permanent future status must be chosen for the child. Seventeen states' statutes require the decision-maker to make a selection at a specific point in time from among permanent placement alternatives for the child, at least one of which is a decision that termination of parental rights should be pursued. These statutes do not necessarily require that continuation in foster care be only for a specified period. Nor do they generally specify a legal standard for the court to use in choosing a permanent placement alternative for the child.

2. Periodic judicial proceedings with permanency planning focus. Eight states have statutes requiring periodic foster care review which specify permanency planning factors to be considered by the court. They do not, however, require that a decision be made on the permanent future status of the child by a specified date.

3. Periodic judicial proceedings to "review" all children under court jurisdiction. Eight states have statutes requiring annual or other court "review" of the cases of foster children under court jurisdiction. These statutes do not require a particular focus on permanency planning options for the child nor do they require a decision on the child's permanent future status if the child cannot return home.

4. Judicial proceedings to extend foster care order; order expires at a specified point in time unless action is taken to extend it. Seven states have statutory provisions governing

foster care orders issued at initial disposition which provide that foster care orders expire at a stated point unless extended by court order. If nothing is done, the order expires and the child must be returned home. However, for children who are not able to return home these statutes generally do not require the court to consider and decide on a permanent future status for the child.

5. Report only or report plus judicial discretion to schedule a hearing. In seven states the agency or review board is required by statute to report to the court periodically on the status of the child. No decision is required by the court with respect to the child's future status although in some of these states a hearing maybe held at the court's discretion.

6. Judicial hearings on motion of a party. Seven states have provisions for hearings on motion of a party. These statutes generally do not require the court to determine a permanent plan for the child's future if the child cannot be returned home.

7. Periodic review by review board or other court-appointed or approved body. While more states reported using such mechanisms, in only two states was there a statutory provision for such review which was the statutory provision closest to the P.L. 96-272 dispositional hearing requirement. (Several states without any statutory provision reported using such a mechanism).

8. No statutory proceeding. Only one state completely lacked any statutory proceeding for review by court or a court-appointed or approved body.

Authority of the Court or Court-Appointed or Approved Body to Order Permanency Planning Options

An analysis was done of state statutes to determine how many of them gave the decision-maker (the court or court-appointed or approved body) the specific authority to order various permanency planning options. The usual sources of such authority are the review or dispositional hearing statute itself or the statutory provision concerning post-adjudication disposition. It was found that in

forty-four states the decision-maker is given authority to order the child's return home; in thirty-eight states the decision-maker may order the child continued in foster care with no period specified; in eight the decision-maker is authorized to order continuation in foster care for a specified period; in twenty-four the decision-maker may either order termination of parental rights or order initiation of termination proceedings; in seven states the decision-maker may order initiation of guardianship proceedings; in nine the decision-maker may order long-term foster care; in twelve the decision-maker may order adoptive placement or efforts to find an adoptive home; and in fifteen, the decision-maker may order provision of services.

Many would argue that courts have inherent authority to issue such orders. However, the findings about specific statutory authority are of particular concern given the finding elsewhere in the study (Volume I) that forty-eight percent of judges surveyed believed they lacked authority to order the agency to initiate termination proceedings, for example. In addition, the fact that statutes do not mandate that continuation in foster care be for a specified period and, instead, permit a decision of continued foster care of unspecified duration may be a strong contributory factor to the number of children who are continued in temporary foster care following these proceedings.

Procedural Safeguards

The survey of state statutes revealed a lack of clarity in the law on the safeguards to be provided at dispositional hearings. There was frequent disagreement noted between what was reported by judges in the national telephone survey to be mandated by law and what was found in the statutes themselves. The expert reviewers also reported frequent disagreements within many states about the procedural protections that apply at these proceedings.

1. Hearing. Thirty-four states were found to have statutes requiring a review or dispositional "hearing" or providing that an order could be extended following a "hearing" or made the requirement of a hearing clear from scheduling and notice requirements. Some state statutes provide only for "review" in a context which is either ambiguous about whether a hearing is required or suggest that it is not. Those states which provide for a hearing on motion of a party generally provide for a "true" hearing in those cases in which a motion is filed.

2. Notice. Statutes that require a hearing typically require notice to parties. Many statutes do not specify a time for providing such notice or only specify "reasonable" notice. Notice ten to fifteen days in advance of the hearing is the most frequent range for those with a specified time for notice. Very few state statutes require that parents be warned in the notice of the possible results of the hearing, i.e., that the result could be initiation of termination of parental rights proceedings.

3. Parties. In thirty-one states parents are explicitly given the right to notice by statute. Older children are named as parties to be notified of proceedings in twenty-one states. Sixteen states require by statute that foster parents or present custodians be notified of the proceedings. Some statutes allow courts to notify "other interested parties."

4. Reports to court/availability to parents/admissibility in evidence. Twenty-nine states have a statutory requirement that some form of report be filed with the court either in conjunction with a review proceeding or independently. These may be from the child welfare agency or citizen's review board. Some statutes require helpful detail on permanent plans for the child. Only nine states require by statute that copies of these reports be provided or made available to parents. Three require by statute that reports be available to older children and three, to the child's attorney or guardian ad litem. Several state statutes provide that these reports are admissible into evidence.

5. Right to present and cross-examine witnesses/rules of evidence. Only nineteen states have statutory provisions insuring parties the right to present witnesses at these proceedings; twenty-nine provide a right to "be heard" or to "participate" in the hearing. (Some states are in all three categories.) These provisions are significant in insuring that more than a paper review is made available. Some ten states have specific statutory provisions on evidentiary rules which apply in these proceedings.

6. Counsel. Some forty-five states have some statutory provision for appointment of counsel or a guardian ad litem, or both, for the child in abuse/neglect proceedings and a majority, some thirty-seven states, also provide for the appointment of counsel for indigent parents at some stages of the proceedings in at least some circumstances. However, the expert reviewers made it apparent that the state of the law is very ambiguous about whether appointment of counsel was required for review and dispositional hearing proceedings or whether counsel appointed for the trial was required to continue to represent the parent or child at review proceedings or whether the state had to continue to pay counsel who chose to continue representation to that point.

7. Record. Only thirteen states have a statutory requirement that a verbatim record be made of review and dispositional hearing proceedings in at least some circumstances; in two additional states one could be kept "on request."

8. Written findings and order. Only eleven states have statutory provisions requiring a written order and findings following a review or dispositional hearing.

9. Appeal. Seventeen states have statutes specifying a right to appeal from a decision at a review or dispositional hearing.

Coverage

Failing to mandate dispositional hearings for all children in foster care is a major failing of many existing foster care review laws. In some thirteen states all children may not receive hearings because the statute requires hearings only on motion of a party or in the court's discretion or not at all. In addition, certain categories of children are frequently excluded from statutory coverage. Thirty-seven states are not required by statute to conduct dispositional hearings for children voluntarily placed in foster care by their parents. (Six of these states limit time in voluntary foster placement by statute, however.) Only fourteen states have some statutorily mandated procedure for these children. This is of special concern because it generally takes a statutory provision to confer authority on the courts to hear these

cases because these children are not under court jurisdiction.

Approximately seven states have provisions specifically mandating coverage for children whose parental rights have been terminated or whose parents have voluntarily surrendered all parental rights to free the child for adoption. The latter category of children are also not under court jurisdiction in the absence of a statute, and the former may have had their cases transferred to other courts for termination of parental rights proceedings.

Timing

Time frame for proceedings.

Where state statutes provided for some form of periodic review or dispositional hearing by a court or court-appointed or approved body for children who remain in foster care, the time frames vary. In ten states the first such hearing is held in six months; in fourteen states, within one year; in nineteen states within eighteen months; and in five states within two years. In nine states hearings are available on motion. In four states paper reviews are required by six months; in two, by one year; and in one, by eighteen months. That is, reports are submitted to the court or required to be considered by the court at these times, but an actual hearing is not required.

In addition, it was found that in twenty-five states the time for review and dispositional hearings is calculated, under the statute, not from the date the child was removed from home but from the date the court entered an order of disposition in the abuse, neglect or dependency case. This may result in extending the time of the hearings well beyond the time the child has been in care for eighteen months.

Subsequent hearings are required by statute at six months in eleven states; at one year in ten states; at eighteen months in nine states; at two years in one state; and at three years in one state. Subsequent paper reviews are required by statute in two states, at six months in one, and one year in the other.

Responsibility for scheduling reviews

In some states the court or review board is required to hold a hearing at a specific point in time. In others,

the agency is required to initiate the proceeding by petitioning for a review or an extension of the order by a certain time.

Court-appointed or approved bodies

Nine states reported during the national telephone survey (Volume I) that they used court-appointed or approved bodies to hold the dispositional hearings required by P.L. 96-272. By the time this volume was written, one of these nine states had passed new legislation establishing a court proceeding. Five of them had no statutory provision establishing the proceedings reported in the telephone survey. Three of the states did have statutory provisions establishing these proceedings. None of these three statutes specified the kind of procedural safeguards one would expect or hope for in a court proceeding. In each, the board or committee is directed by statute to permanency planning considerations for the child and must report to the court its findings. Moreover, in none of these states is the board's or committee's recommendation binding nor in any of these three states is there a statutory requirement of a decision on the child's future status at a specific point in time.

1. INTRODUCTION

This report is the third of four volumes presenting results of the Comparative Study of Case Review Systems Phase II - Dispositional Hearings. The study focused on implementation of the dispositional hearing requirement of P.L. 96-272. The first volume presented the results of a 50 state telephone survey on the implementation of the dispositional hearing requirement. It also presented an introductory survey of the statutory requirement for foster care review by agency administrative panels, citizens' review boards and courts.

Volumes II and IV presented the results of site visits to eight selected states to examine in detail their implementation of the dispositional hearing requirement. Volume II contains a case study of implementation in each of the eight states. Volume IV contains an analysis of a survey of judges, lawyers and social workers in those eight states. It also contains the results of abstraction of 450 case records of children having had hearings.

The present volume, Volume III, contains the results of an analysis of legal issues which have been presented as states have sought to implement the dispositional hearing requirement. It also contains the results of a detailed survey of the statutory provisions for each state and the District of Columbia which most closely resemble the dispositional hearing requirement of P.L. 96-272.

The remainder of the introduction is divided into two sections: (1) study background and related studies and (2) study methodology for the state statutory survey and legal analysis.

1.1 Study Background and Related Studies

Under the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Congress outlined a case review system intended to help assure that child welfare agencies do not lose track of children under their care, that parental and child rights are protected, that agencies periodically report upon the progress made in implementing case plans, that agencies direct their actions toward a permanent plan for every child in placement and that a decision be made on the child's future status in a timely fashion. This case review system includes three components:

- A case plan designed to achieve placement in the least restrictive (most family-like) setting.
- A semi-annual review by a court or administrative body which focuses on the continuing need for placement, compliance with the case plan, the progress made toward alleviating the need for placement and projects a date by which the child may be returned to the home or placed for adoption or legal guardianship.
- Procedural safeguards including a dispositional hearing conducted by a court, or an administrative body appointed or approved by the court, within 18 months of the child's placement and periodically thereafter to determine the future placement status of the child.

The case review requirements are discussed more fully in the introduction to the Legal Issues Chapter, Chapter 2. This was not the first time review requirements have accompanied federal funding legislation. Section 408 of the Social Security Act called for review of case plans for children under the AFDC-Foster Care Program and past regulations for the IV-B program required case plans which were to be reviewed periodically. However, P.L. 96-272 was the first time that dispositional hearings were required for

additional funding under Title IV-B and under certain circumstances under Title IV-E.

1.1.1 The Spread of Judicial Review in the 1970's and 1980's

While P.L. 96-272 was the first federal legislation to require that dispositional hearings to determine the future status of foster children be held by a court or court-appointed or approved body as a condition of receiving maximum federal funding, the earlier judicial review concept was not new to the states. While these reviews increasingly focused on long-term plans for foster children, they often did not require a decision on the child's permanent future status. Studies conducted in the 1970's illustrate the spread of foster care judicial review throughout the 1970's.

One of the first places to utilize periodic court review of foster care cases in the early 1970's was New York State. In 1971 the New York Social Services Law was amended to require that agencies charged with the responsibility of managing foster care cases periodically file a petition in the Family Court to review the status of any child voluntarily placed in foster care and remaining in such care for 24 months or longer. The 1971 provisions have since been expanded, so that today, all children who remain in care for 18 months must be reviewed by the Family Court if the placement is to continue beyond the eighteenth month.

In 1972, the Kent County, Michigan, Juvenile Court established a model case review system in which judicial reviews were held annually. The results of this model project led to the passage of a National Council of Juvenile and Family Court Judges resolution in 1973 which encouraged courts to "act early and decisively on the disposition of children in placement."

In 1976, Claburn, Magura and Resnick conducted a survey of all states to determine the extent and types of foster care review operating within the country. They obtained results from 47 states and the District of Columbia and Puerto Rico.

They found that seventy-five percent of the 16 states having court reviews (full or limited) had been established since 1970 and 79 percent of the agency administrative reviews had been developed since 1974. In contrast 70 percent of the supervisory reviews had been created before 1970. At that time (1976) the study found 17 states with no reported court or agency periodic review. The study also found that court review and full agency review seemed to have developed as functional alternatives to each other, since there were no states with both full agency review and full court review. Claburn, Magura, Resnick, Periodic Review of Foster Care: A Brief National Assessment, 55 Child Welfare 395 (1976). By 1978, when the Children's Defense Fund conducted a similar study, they found that twenty-one states had legally mandated court review. J. Knitzer, M.L. Allen and B. McGowan, Children Without Homes (1978).

Between 1978 and 1980 there was a further increase in the number of states utilizing some form of periodic judicial review. The Phase I study of case review systems found that when state representatives were asked in 1980 "whether judicial review of the cases of children in foster care is mandated in state statute and/or required by agency policy" only 15 states responded negatively. By 1982 this number was reduced even further as state agencies began to try to meet the P.L. 96-272 requirements. JWK International Corporation, Comparative Study of State Case Review Systems,

Task IV Report, 1982 Classification 9-12. These results indicate that some form of limited judicial review of foster care placement had become operative in most states by 1980. It is important to note that judicial review cannot be equated with holding the full dispositional hearings required by P.L. 96-272 for maximum funding. In some states the agency was required to file a report on a periodic basis but no actual court review hearings were mandated.

1.1.2 Results of the Westat/ABA National Telephone Survey

In the Spring of 1983 the 50 state telephone survey was conducted (see Volume I). This study differed from previous studies of judicial review because it was focused specifically on dispositional hearings as required by P.L. 96-272. This survey found that by 1983 all states but five indicated they had a formal policy or law on holding court hearings by the eighteenth month in care. The other five were in the process of developing such policy. However, at the time of the survey only sixty-six percent of states indicated they both had such a policy or law and that implementation had occurred for at least 80 percent of the children in the state.

Seventy-five percent of states indicated they had changed law or policy in some respect to meet P.L. 96-272 hearing requirements. At that time thirty-one states had legislation requiring some form of court review within 18 months. Since the study was conducted at least three more have passed legislation. Administrators and judges expressed considerable support for the hearings and expectations of positive impact.

1.1.3 Studies of the Impact of Judicial Foster Care Review

Studies attempting to assess the impact of judicial review of foster care are limited by the occurrence during the same period of related events within the field of child welfare. The most frequently used outcome measures have been indicators such as length of time in care, number of children either freed for adoption or returned home, and the presence of clearly defined permanent placement goals in the case plans developed by the agency. These indicators have also been influenced in the last ten years by other related factors such as the increased permanency planning training and orientation of child welfare workers, increased use of adoption subsidy, the decline in number of adoptable infants, making hard to place children more adoptable, and agency budget cuts, all of which have significantly contributed to a decline nationwide in the length of time in care and the number of children in foster care. A few studies have attempted, however, to assess the impact of court review directly.

In a carefully designed study, Festinger researched the effects of the New York court review process on 235 cases of voluntary placement children in care. She concluded that judicial intervention had a favorable effect on case planning and that the review speeded the movement of children out of foster care. Festinger, The Impact of the New York Court Review of Children in Foster Care: A Follow-up Report, 55 Child Welfare 515 (1976).

In particular she found that the court review process had an immediate impact on an agency's development of case plan goals for children in foster care. Among her findings were:

- There was a steady decline in the number of cases having a goal of continued foster care or unclear goals (the total decreased from 71 to about 29 percent of cases);

- There was an increase in the number of cases having a case plan goal of discharge from foster care (from 14 to 26 percent); and

- There was an increase in the number of cases having a goal of adoption (from 15 to 46 percent).

The study also showed that in the cases of the children studied, judicial reviews increased the likelihood of actually achieving permanent placements for children who had been in care for more than 18 months.

The findings of the National Council of Juvenile and Family Court Judges Children in Placement Project similarly found that periodic judicial reviews of children in foster care was associated with an increased number of children returned home, an increased filing of adoption petitions and petitions to legally free children for adoption, and increases in the separation of children and parents from agency supervision. Davidson, Periodic Judicial Review of Children in Foster Care: Issues Related to Effective Implementation, 32 Juv. Fam. C. J. 61 (May 1981).

1.1.4 Summary and Implications for the Current Research

This review of the status of the states and of the related literature suggested the following factors important in developing this study:

- The period between 1970 and 1980 had already seen a development of a variety of external mechanisms to monitor and review placement of children in foster care. By 1980, in a majority of states this involved some form of judicial periodic review. However, judicial review did not necessarily mean

that actual hearings were held nor that decisions on a child's permanent future status were actually being made when a hearing was held.

- Several states were also already utilizing other external review mechanisms such as citizen review boards and a majority of states had administrative review on a periodic basis. It was found that to a certain extent states having highly developed administrative or citizen review made less use of judicial review (Claburn, Magura, Resnick, 1976).

- The early assessment literature cited here supports the belief that external review of foster care cases has had a favorable impact on management progress and outcome of cases. However, the occurrence of simultaneous change in related areas (not usually controlled for in the studies) makes it difficult to assess the impact of foster care review considered in isolation from other related factors.

1.2 Study Methodology

This section describes the methodology for the overall study with special focus on the state statutory survey and legal analysis components (See Volume I for National Study Methodology).

The overall study was conducted to address three major questions:

(1) What is the response of states to the provisions for dispositional hearings by a court or court-appointed or approved body as required by P.L. 96-272?

(2) How are dispositional hearings operating in the states?

(3) What are the advantages, problems and issues surrounding implementation of the hearings?

The aim of the study was to provide information useful to state agencies and courts on how the hearings are functioning. On a limited basis, primarily through analysis of hearing decisions, the issue of case outcomes is also addressed.

1.2.1 The Study Context

Any attempt to describe the functioning of the hearings within the states must take into account that the hearings occur within several related subsystems. The two state systems most involved are the state foster care system and the judicial system. The dispositional hearing provision is unique among the components of P.L. 96-272 because while the law is addressed to state agencies (by making certain funds available to them) the dispositional hearing requirement must ultimately be implemented by the judicial system.

1.2.2 The Study Parts

To address the study questions, a two-part study was conducted to obtain a national overview of the hearings in fifty states and Washington, D.C. (reported in Volumes I and III). An in-depth study was also done of the hearings as conducted in eight selected states (reported in Volumes II and IV). A special feature of both parts of the study was collection of parallel information and opinions from both the court and agency perspective.

1.2.3 The Legal Analysis

During the course of planning and conducting the national telephone survey, the in-depth site visits and the

state statutory survey a number of legal questions about the dispositional hearing requirement of P.L. 96-272 were identified. For example, there were questions about exactly who could conduct the hearing, the nature of the decision which is required and which children must be covered. In an attempt to answer these questions an analysis was made of the various legal issues and of the legislative history of the dispositional hearing requirement. That analysis is presented in Chapter 2, Legal Issues.

1.2.4 The State Statutory Survey

A survey was conducted in February 1983 of state statutes governing dispositional hearings and periodic case review. Both topics were covered because there is often no distinction made between the two in state statutes. The overview summary was published in Volume II of this study in a chart entitled "Case Review Requirements of State Statutes."

Thereafter, the statutory provision of each state which most closely resembles the P.L. 96-272 dispositional hearing provision was selected for further analysis. A summary of the statutory provision was prepared for each state. The summary for each state's statutory provisions was sent to an expert reviewer for that state. A list of the expert reviewers, who generously donated their time, appears in the Acknowledgements. Those state-by-state summaries appear in Appendix A, Summary of State Statutory Provisions Closest to P.L. 96-272 Dispositional Hearing Requirements.

An examination was then made of these statutory provisions as summarized for each state in order to obtain answers to a number of questions:

1. What procedure is used by the state which is closest to the P.L. 96-272 dispositional hearing requirements?

2. What children are covered by that procedure?

3. What procedural protections are provided by statute with respect to that proceeding?
i.e.:

   -- must a hearing be held?
   -- who are parties and may participate?
   -- what form of notice is required?
   -- is a report required to be filed? who must be furnished a copy? is it admissible in evidence?
   -- what are the provisions with respect to witnesses? may they be subpoenaed, presented, cross examined?
   -- must a record be made of the proceedings?
   -- are written findings and an order required?
   -- may the order be appealed?
   -- must counsel be appointed for the child? the parents?

4. Who schedules these proceedings and what time frame is specified by statute?

5. What decision is the court or court-appointed body required to make at this proceeding? What is the statutory standard for this decision?

6. What authority does the court or court-approved or appointed body have with respect to issuing a binding decision? May it:
   - -- order that the child be returned home?
   - -- order that the child be continued in foster care for a specified period?
   - -- order that services be provided to the child or family?
   - -- order that the child be placed in long term foster care or that guardianship proceedings be initiated?
   - -- order that a petition for termination of parental rights be filed?

The results of this analysis of the laws of all fifty states and the District of Columbia are reported in Chapter 3, State Statutory Survey Results.

2. DISPOSITIONAL HEARINGS
LEGAL ISSUES

2.1 Introduction

Public Law 96-272 requires states which choose to participate in certain aspects of the federally funded foster care and child welfare services programs to establish a "case review" system covering every child in state supervised foster care. In full, the case review system consists of the following elements:

1) A case plan for each child;
2) A review every six months of to determine progress in accomplishing the plan and to establish a date for achieving a permanent placement for the child such as return home or adoption;
3) A dispositional hearing for each child by a court or court-appointed or approved body to determine the child's future status no later than eighteen months after the child enters care; and
4) Procedural safeguards to protect parental rights when the child is removed from home, when the child's placement is changed and when visitation privileges are changed.

Social Security Act §475 (1), (5), 42 U.S.C. §675 (1), (5) (Supp. V 1981).

This study is focused on the third of these requirements, the dispositional hearing requirement.

All states which participate in the federal foster care program must provide the first two elements of the case review system - the case plan and the six month review

of foster care status - for all children who receive foster care funding under the federal program. Social Security Act §471 (a), (16), 42 U.S.C. §671 (a)(16) (Supp. V 1981). The third and fourth elements, the dispositional hearing and other "procedural safeguards," are required of states in three circumstances:

(1) When a state seeks additional funds for child welfare services. Social Security Act §427 (a) (2) (B), 475 (5), 427 (b); 42 U.S.C. §§627 (a) (2) (B), 675 (5), 627 (b) (Supp. V 1981);

(2) When a state wishes to claim federal reimbursement for the cost of providing care to children voluntarily placed in foster care by their parents, Public Law 96-272 §102, amending Social Security Act §472, §§427 (b), 427 (a), 475 (5); 42 U.S.C. §§672, 627 (a), (b), 675 (5) (Supp. V 1981); and

(3) When a state wishes to transfer unneeded foster care funds from title IV-E to use on Title IV-B child welfare services (such as preventive services programs, etc.) Social Security Act §§474 (c), 427, 475 (5), 42 U.S.C. §§674 (c), 627, 675 (5) (Supp. V 1981).

For a further discussion, see Allen, Golubock & Olson, A Guide to the Adoption Assistance and Child Welfare Act of 1980 in Foster Children in the Courts (M. Hardin ed. 1983).

At the present time a substantial majority of states have claimed additional funding for the child welfare services pursuant to Title IV-B of the Social

Security Act by certifying that they are in compliance with all of the elements required by that program including the dispositional hearing and other procedural safeguard requirements. For these states, as well as those claiming reimbursement for the cost of voluntary foster placements or transferring unused foster care funding, the dispositional hearings provided in P.L. 96-272 are a required component of their foster care program.

2.1.1 What are the components of the case review system?

The statutory provisions which establish the four components of the full case review are set forth as follows in the law:

1) Case plans - "[T]he term 'case plan' means a written document which includes at least the following: a description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child in accordance with section 472 (a) (1); and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan. Social Security Act §475 (1), 42 U.S.C. §675 (1) (Supp. V 1981).

"(A) [The case review system must assure that] each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child." Social Security Act §475 (5) (A); 42 U.S.C. §675 (5) (A).

According to the HHS regulations, this plan must be a written document and must be established no later than 60 days after the child enters foster care. U.S.C.F.R. §1356.21 (d) (1), (2).

2) Six month reviews - "[The case review system must assure that] the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship".

"The term 'administrative review' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services

to, either the child or the parents who are the subject of the review. Social Security Act §475 (5) (B), 6; 42 U.S.C. §675 (5) (B), 6 (Supp. V 1981).

3) Dispositional hearings - "[W]ith respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis)." Social Security Act §475 (5) (C); 42 U.S.C. §675 (5) (C) (Supp. V 1981).

4) Procedural safeguards regarding removal, visitation, changes of placement - "[P]rocedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement and to any determination affecting visitation privileges of parents." Social Security Act 475 (5)(c); 42 U.S.C. 675 (5) (c) (Supp. V 1981).

As described earlier, this study focuses on the dispositional hearing requirement. A previous study, the JWK Study, studied implementation of the six month review requirement.

2.1.2 Purposes of the dispositional hearing requirement

The legislative history of P.L. 96-272 suggests that there were three primary purposes for the dispositional hearing requirement: 1) to provide time limited decision-making with respect to the future status, or permanent home, for each child in foster care; 2) to protect the rights of parents with respect to that decision-making process and 3) to ensure some measure of external accountability for agency decisions and actions regarding a future home for the child.

The structure of the entire case review system suggests a concern for time limited decision-making with respect to the child's future. The case plan, to be established at the outset of the case, must, among other things, describe the services to be provided to improve conditions in the parent's home and to facilitate return or to facilitate another permanent placement for the child. Every six months the status of the child must be reviewed to determine progress on and compliance with the case plan and "to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship." In order to do the latter it would be necessary to establish a case plan goal and determine a date by which it could be accomplished. Finally, the dispositional hearing, which must be held before the child has been in care eighteen months, must actually "determine the future status of the child."

After noting the problem of children becoming "lost" in foster care, and the inefficiency of annual judicial reviews which did not focus on the child's future placement, Senator Cranston, one of the Senate sponsors of P.L. 96-272, stated:

> "This provision requiring a dispositional hearing after a child has been in foster care for a specific period of time should assist States in making the difficult, but critical, decisions regarding a foster child's long-term placement."

125 Cong. Rec. 29942 (October 29, 1979) (statement of Senator Cranston).

A number of elements of the legislation indicate congressional concern with providing protections for the rights of parents with respect to decision-making in each child's case. Parents are assured the right to participate in the six month reviews; a neutral third party is required to help assure the objectivity of the reviews. Similarly, by requiring that dispositional hearings be held before a court or court-appointed or approved body it would again appear that Congress intended to assure an impartial decision-maker and procedural fairness to the parties. Additional procedural safeguards were required to be provided to protect the interests of parents on questions of removal of the child from home and changes of placement or visitation. Again, quoting Senator Cranston, regarding the procedural safeguards of dispositional hearings and other procedural safeguards:

> "[T]hese minimal due process requirements - leaving to the discretion of the states the precise mechanisms for protecting the rights of persons in the foster care system - are clearly necessary to ensure that each person be treated with the fairness and procedural safeguards essential to the operation of a fair and equitable system."

Ibid.

Finally, the legislative history indicates congressional concern with ensuring agency accountability:

> "These specific requirements [including case plans, six month reviews and dispositional hearings], focused upon adequate planning and review of the placement of individual children are aimed at eliminating the all-too-common practice of agencies placing children in foster care and then forgetting about them."

126 Cong. Rec. 14767 (June 13, 1980) (Statement of Senator Cranston).

Congress had also received reports of agencies' failure to conduct reviews of the cases of children in foster care which were required under previous federal law. See General Accounting Office, Children in Foster Care Institutions: Steps Government Can Take To Improve Their Care 9-10 (1979); General Accounting Office, More Can Be Learned and Done About the Well-Being of Children 6-7 (1976).

2.2 Legal issues

As states have sought to implement P.L. 96-272 a number of legal issues have arisen with respect to its interpretation. In this section of the report we will explore some of those issues. The reader should refer to the state statute summaries in Appendix A for citations to the various statutory provisions which we discuss.

2.2.1. Who may conduct the dispositional hearing?

P.L. 96-272 provides that the dispositional hearing must be held:

> "in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court."

Questions have arisen about what this provision means. For example, many states routinely use magistrates, referees, or hearing commissioners to hear juvenile cases. Is it acceptable for these hearing officers to conduct the dispositional hearing required under P.L. 96-272? In other states questions have arisen whether use of citizen's review boards, agency administrative reviews, or other forms of review approved by the court are acceptable.

It is apparent that the Congress gave the states considerable discretion in deciding on the precise form that would be used for holding dispositional hearings. However, the legislative history of the provision also suggests several specific concerns of Congress in determining who the decision-maker or decision-making body should be.

First, it appears that Congress was concerned that the decision-maker or decision-making body be capable of providing a hearing comporting with full due process requirements. Congress used the term "hearing" to describe the dispositional proceeding rather than "review" or some other term. This suggests a certain degree of formality such as notice and opportunity to present witnesses. (See discussion of the meaning of the term "hearing" in section 2.2.2, below.) The use of the term "procedural safeguards" suggests the same. (See discussion of these procedural safeguards in section 2.2.2, below.) The legislative history also suggests a specific concern that these proceedings comport with due process requirements. See Statement of Senator Cranston, second paragraph, Section 2.2.2 below.

This statement includes a discussion of specific due process protections such as notice, the right to be heard, a possible right to counsel in some cases, and notice of any determination of rights. A determination of the child's future status is certainly a serious issue and therefore would require a hearing body able to provide more protections and formality.

The quotation referred to also suggests a second consideration - that the decision-maker be impartial. Impartiality of the decision-maker is one of the essential elements of procedural due process. See discussion in J. Nowak, Constitutional Law 558-59 (1983).

The fact that Congress required that this hearing be conducted by a court or court-appointed or approved body also suggests a greater concern for impartiality than in

the administrative review panels required at six month reviews. In that case only one neutral person is required on a panel, which otherwise may consist of persons directly responsible for the case.

Finally, the hearing body should be able to hold the agency accountable for its actions and to issue a decision on the child's future status for the agency to follow. Congress's concern with accountability is described in the introduction, above. The need for the hearing body to be able to issue binding decisions if there is to be a true "determination" of the child's future status is discussed in section 2.2.3, below.

Together, these elements indicate that in analyzing whether a particular body is a suitable one for holding dispositional hearings the following questions must be asked:

(1) Is the decision-maker or decision-making body capable of providing a hearing comporting with due process requirements?
(2) Is the decision-maker impartial?
(3) Is the decision-maker able to provide an effective check on agency decision-making and to hold the agency accountable?

Quasi-judicial officers, such as referees, commissioners, magistrates, or hearing officers are employed in many juvenile courts. Typically they follow the same procedures as do judges. Such an arrangement would appear to meet P.L. 96-272 requirements so long as the quasi-judicial officers employed are law trained and therefore able to insure that proceedings are conducted in

accordance with due process standards. Notice requirements apply to proceedings before them. Usually, a hearing de novo (new hearing) must be held by a judge if the parties request it or, alternately, a judge must approve the recommended order of the referee or commissioner. The hearing officer is impartial, assuming a particular court does not hire an individual with a personal conflict of interest (say an attorney also employed by the social service agency to prosecute cases). It also provides an external check on agency decision-making to the same extent the court is given sufficient authority.

More questions arise with respect to court-appointed or approved administrative bodies. Must they be under court supervision? May the administrative body be appointed by the agency and only "approved" by the court? May it be appointed by the agency and consist of agency staff?

First, it should be noted that any administrative body should be capable of providing a due process hearing. This generally requires that the person conducting the hearing be law trained. This is necessary to insure that proper evidence is taken and that a decision is made on the basis of the record at the hearing. Further, any decision-maker should operate under a set of rules specifying the applicable procedures. Most citizen review boards, while they may be perfectly appropriate for six month reviews required by P.L. 96-272, do not have the ability to provide this type of due process procedure. See Musewicz, The Failure of Foster Care: Federal Statutory Reform and the Child's Right to Permanence, 54 S. Cal. L. Rev. 633 (1981). Therefore, the role of current review boards could be limited to filing a court report with the

court to be considered, along with other evidence, at the dispositional hearing held by the court. It would be possible, however, to establish a review board capable of providing due process safeguards. An additional difficulty with using present-day review boards is that they generally have authority only to make a recommendation on the child's future status, not to decide it. Review boards do have the advantage of consisting of impartial members.

It also appears that Congress intended that the dispositional hearing be conducted outside the agency and outside of agency control, thus arguing against the possible use here of agency review panels. Two different types of oversight were provided for by P.L. 96-272, the six months reviews of progress on the case and a determination of the child's future status by eighteen months of placement. The statute specifically provides that the six month reviews may be conducted by the agency and that the review group could include a worker or supervisor although it must also include a neutral party. However, no such arrangement was specifically authorized by Congress for the dispositional hearing. Instead, that section refers to a hearing held by a court or court-appointed or approved body. In addition, as discussed in the introduction, Congress was well aware of the need for external accountability for agency actions. For these reasons, it appears that Congress intended that the dispositional hearings be conducted by administrative bodies external to the agency even though an agency hearing procedure could be established providing due process safeguards and a technically impartial, law trained decision-maker such as an administrative law judge. Certainly, it would appear that foster care caseworkers and supervisors would not meet the level of personal

impartiality required by general due process standards whether they served as part of an agency or an external administrative body.

2.2.2. What procedural safeguards must be in place at the dispositional hearing?

P.L. 96-272 provides:

> "[P]rocedural safeguards will be applied to assure each child in foster care . . . a dispositional hearing to be held in a family or juvenile court . . . or by an administrative body appointed or approved by court . . . which hearing shall determine the future status of the child . . . ." [emphasis added.]

A number of questions have arisen about the due process aspects of these proceedings. Exactly what safeguards must be in place at this hearing? What does it mean to require a "hearing?" Is a "paper review" at which the court is only required to review reports submitted by the child welfare agency a sufficient hearing under P.L. 96-272? An ex parte proceeding attended only by the judge and agency social worker or agency attorney? A meeting attended by parents at which the child's future is discussed? A decision on consent order with no formal "hearing", based on stipulations of all the parties? Does it matter whether they were represented by counsel or not?

Senator Cranston described his concept of the procedural safeguards which were required in the dispositional hearings and with respect to removal of a child from home and changes in visitation and placement:

"The legislation does not specify the precise mechanism or the specific procedures which a State must follow in establishing due process protections. The procedures, must, however, embody the basic components of due process--providing parents and other interested parties with notice of proceedings, the nature of the proceedings, and the possible consequences. The parties must be provided an opportunity to be heard. Where necessary, counsel must be provided. For example, the U.S. Court of Appeals for the Ninth Circuit has held that the due process clause of the Constitution requires that States must provide counsel for indigent parents in proceedings in which parents cannot properly present their case without counsel and where the parents face a substantial possibility of loss of custody of child or a prolonged separation from the child (Cleaver v. Wilcox, 499 P 2d 940, 9th Cir. 1974).

"The parties should also receive timely notice as to any determination of their rights and an indication of the basis for the decision. Such proceedings need not, in every case, be a full judicial hearing, but should be presided over by an impartial and disinterested person, and comport with the general notion of due process proceedings. Obviously, the more serious the nature of the rights affected the more formal the proceedings must become."

125 Rec. 11708 (August 3, 1979) (statement of Senator Cranston).

The "basic components" of due process mentioned above are at least the elements of due process established

as essential through decisions of the Supreme Court. One legal commentator summarized these elements as follows:

> [O]ne should note the different elements of the adversary process which may be required as part of the "due process" which must be afforded to an individual when the government deprives him of life, liberty or property. The <u>essential elements</u> are: (1) adequate notice of the charges or basis for government action; (2) a neutral decision-maker; (3) an opportunity to make an oral presentation to the decision-maker; (4) an opportunity to present evidence or witnesses to the decision-maker; (5) a chance to confront and cross-examine witnesses or evidence to be used against the individual; (6) the right to have an attorney present the individual's case to the decision-maker; (7) a decision based on the record with a statement of reasons for the decision. Additionally, there are six other procedural safeguards which tend to appear only in connection with criminal trials or formal judicial process of some type. Those are: (1) the right to compulsory process of witness; (2) a right to pretrial discovery of evidence; (3) a public hearing; (4) a transcript of the proceedings; (5) a jury trial; (6) a burden of proof on the government greater than a preponderance of the evidence standard. There will also be a question concerning the burden of proof which either the individual or the government must bear. Additionally, there will be a question of one individual's right to appeal from an adverse decision by the initial decision-maker. To date the Supreme Court has never found a right to appeal as inherent in the right to due process of law. [emphasis added]

J. Nowak, Constitutional Law 556-57 (1983). See also K. Davis, Administrative Law of the Seventies, Chapters 6 and 7 (1976) (Single volume supplementary treatise).

It is reasonable to conclude that the Congress by its use of the term "hearing" and its requirement of procedural safeguards intended states to provide at least the several "essential elements" of procedural due process specified above which have been identified in a number of cases and to provide more than the essential elements where particularly important rights are at stake.

In addition to the fact that a particular procedural safeguard may be mandated because Congress intended to require them in passing P.L. 96-272, they may also be constitutionally required. A long line of cases have recognized the fundamental right to a family integrity and freedom from government intrusion in decision-making regarding child-rearing and family matters. See, e.g., Meyer v. Nebraska, 262 U.S. 390 (1923); Prince v. Massachusetts, 321 U.S. 158 (1944); Wisconsin v. Yoder, 406 U.S. 205 (1972). More recently, a series of cases have recognized the right to procedural due process at the time of state intervention in the family in the child welfare context. See Stanley v. Illinois, 405 U.S. 645 (1971); Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977); Santosky v. Kramer, 445 U.S. 745 (1982); and Lassiter v. State Dep't of Social Services, 452 U.S. 18 (1981). These cases establish that the legal interest in the family relationship is a fundamental one and that due process is required in decisions that affect it.

The Supreme Court has recently stated that it will consider three factors in making a determination whether specific procedural safeguards as required:

> First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requisites would entail.

Matthews v. Eldridge, 424 U.S. 319, 335 (1976)

Pursuing this analysis leads to the conclusion that at least those "essential elements" of due process described above are required at dispositional hearings. The right to family integrity is a fundamental one. The dispositional hearing on the child's future status is a critical decision-making point in the family relationship. While in some situations, such as those involving termination of parental rights, a further due process proceeding may be available, in others, a vital decision may be made with no further avenue of recourse. For example, a decision not to return the child home but, rather, to place the child in long term foster care for the duration of her minority is a very significant decision in terms of the family relationship but will not ordinarily be the subject of any other legal proceeding, except possibly a later, additional dispositional hearing. The decision which must be made is a complex and difficult one.

The "essential" elements listed above all appear to be essential to a fair proceeding because of the complexity of the proceeding, the frequent need to bring to bear expert testimony such as that of psychologists or psychiatrists, and frequent disputes as to facts. For example, the reasons a parent failed to visit a child or the reasons an agency failed to provide services may be hotly disputed and be facts essential to a decision in the case. Given that Congress has required a hearing before a court or court-appointed or approved body there is relatively little extra burden from providing essential due process safeguards.

In addition to case law on procedural due process, there is a body of case law defining the meaning of the term "hearing". These cases suggest that a hearing, which originally was an equity term, includes the presentation of evidence, including witnesses, arguments on the law and a decision. State v. State Road Commmission, 131 S. E. 7, 8 (W. Va. 1925); City and County of Denver v. State Inv. Co. 112 P. 789, 792, 49 Colo 244 (1911); Equitable Life Ins. Co. of Iowa v. McNamara, 278 N. W. 910, 913 (Iowa 1938); Shields v. Utah Idao Cent. R. Co., 305 U. S. 177 (1938); Stare ex rel. Edwards v. Donovan, 41 S. W. 2d 842, 845 (Ct. App. Mo. 1931); Crucia v. Behrman, 84 So. 523, 525, 147 La. 137 (1920); Watt v. Weyerhauser Co., 573 P.2d 1320, 1324, 18 Wash. App. 731 (1977); Darmos v. Pasqua, 374 A.2d 814, 815, 34 Conn. Sup. 529 (1976): Chevy Chase Citizen's Ass'n v. District of Columbia Council, 327 A.2d 310, 314 (D.C. App. 1974); Professional Sports Ltd. v. Virginia Squires Basketball Club Ltd. Partnership, 373 F. Supp. 946, 950 (D. Tex 1974); In re Borough of West Alexander, 301 A2d 662, 666, 450 Pa. 453 (1973); Seibold v. State, 253 So.2d 302, 309 2897 Ala. 549 (1971).

Based on all of the above, it would appear that none of the following would meet minimum requirements of P.L. 96-272:

-- A report to the court with no "proceeding"

No hearing is held and the "essential elements" of due process are not provided to the family.

-- A court review of papers submitted with no opportunity for oral presentation or witnesses

No hearing is held and there is no right to present witnesses and evidence even though there may be factual disputes.

-- A court proceeding in which only agency representatives are invited to attend

Parents and child are not provided the essential elements of due process.

-- A "conference" type proceeding with no opportunity to present or cross-examine witnesses or cross-examine the preparer of a report

Parents and child are denied some of the "essential elements" of due process including the right to present evidence and cross-examine witnesses on disputed facts.

-- A proceeding in which counsel for the parties is not allowed to hear all testimony and argument presented to the decision-maker

> Being allowed representation by counsel at least at one's own expense is an essential element of due process. A party is denied effective assistance of counsel if counsel cannot hear all the proceeding.

A further question arises whether testimony actually must be taken in each case or whether it is sufficient if an opportunity to present and cross-examine witnesses is offered and, instead, stipulations by all parties are presented; or an informal proceeding without testimony is actually held; or an offer of a hearing is made but none is scheduled unless a party requests it. At least two competing considerations are in operation here. The first is, that in usual due process analysis, what is required is an opportunity to be heard or an opportunity to present and cross-examine witnesses. In general, cases do not require that the opportunity be used.

However, other considerations apply in the case of dispositional hearings in determining what Congress intended. Judges are accustomed to deciding cases in which opposing sides present opposing points of view or reach agreement. However, in these cases, the child has an interest often distinct from the interest of parents and agency. The parents may be too uninterested to respond, yet the agency may not have developed a permanent plan for the child. Similarly, agency and parents could agree to return the child home or to continue foster care, ignoring the child's need for safety or for a permanent home. The question therefore arises whether the court should be required to hold some form of hearing, or to inquire into the agency's activities in order to protect the interests of the child whether other parties raise issues or not.

This is particularly a concern when the child is not represented by counsel at all or is no longer represented at the dispositional hearing phase of the case. This frequently is the case in many states. See Volume IV on the finding that in the sample states the child was not represented by counsel at the time of the "dispositional hearing" in over half the cases. Arguably, Congress intended that a live hearing be held at least unless the child was represented by independent counsel or an independent guardian ad litem who agreed to the plan agreed to by parents and agency.

2.2.3. What is meant when P. L. 96-272 says the dispositional hearing "shall determine the future status of the child?"

The P.L. 96-272 dispositional hearing requirement assures to each child in foster care:

> "a dispositional hearing . . . which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis)"

Social Security Act §475(5)(C), 42 U.S.C. §675(5)(C)(Supp. V 1983)

A number of questions have arisen about this portion of the dispositional hearing requirement. First, must the court or court-appointed or approved body actually make a decision about the child's future at this hearing or may the child simply be continued in foster care if the court thinks that best? If a decision about the child's future status is required is it sufficient for the court or hearing body to spell out its preference of permanent plans for the child and leave it to the agency's discretion whether or not to carry out that preference or to allow the agency to decide on the timing of steps to be taken? Must the decision of the court or hearing body be binding on the agency? Must the court or hearing body actually issue an order requiring certain steps to be taken by the agency?

In attempting to answer these questions it should be recalled that in enacting P.L. 96-272 Congress was very concerned about children getting "lost" in foster care. See 125 Cong. Rec. 22109 (August 2, 1979) (statement of Rep. Corman); 125 Cong. Rec. 29942 (October 29, 1979) (statement of Senator Cranston); 126 Cong. Rec. 14767 (June 13, 1980) (statement of Senator Cranston). Specifically there was concern that children were lingering in care until adulthood and did not have the benefit of periodic reviews of their care or of requirements that they be moved toward permanent families.

All indications are that Congress intended that a decision actually be made about the child's future status at the dispositional hearing and that the child not simply be continued in foster care following the dispositional hearing. There are several indications of this. First, Congress considered eighteen months to be a critical decision-making point in a child's case. In the course of

discussing the dispositional hearing requirement the House Committee Report states:

> "Studies have shown that most children who remain in foster care for more than eighteen months are likely to remain in such placement until majority, regardless of whether such continued placement is the most desirable option for the particular child. The Committee is concerned that foster care in these cases becomes a long-term holding situation rather than a short-term program as it was originally conceived. Long-term foster care should be regarded as an option only when neither a return to the family nor adoption is possible."

H.R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979). This suggests that Congress intended that a decision be made at the eighteen month point.

Second, the statutory language itself indicates that a child may be continued in foster care following the dispositional hearing only for a "specified period" or when long term foster care is specifically chosen as the plan for the child's future status. (This latter option is discussed more fully in section 2.2.4.2 below, and appears to be limited to situations in which neither return home nor adoption is possible.)

The language of the House Report describes the option of continuation in foster care for a specified period as: "whether the child requires continued placement for a specified period not to exceed six months, except where the court or administrative body determines there are special circumstances which prevent immediate return to a

parent." H. R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979). This would appear to indicate that six months was the outside limit for continuation in foster care. It is not clear whether this six month extension was to be limited to those situations in which special circumstances prevent immediate return to the parent when return home is clearly the desirable plan or whether such special circumstances - such as incarceration or participation in a rehabilitation program, for example - are to be a basis for continuing a child in foster care beyond the usual six month limit. In either event, it would seem clear that Congress did not intend extended foster care beyond six months after the hearing except when return home was the preferred plan and special circumstances prevented the child's immediate return.

Another indication that Congress intended that a decision be made at 18 months rather than that a case plan goal be established is the distinction between the six month review requirement and the dispositional hearing requirement. The six month review provision requires the reviewer to "project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship." This suggests that a goal must be established along with a date for achieving it. In contrast, the language "determine the future status of the child" suggests a <u>decision</u> about the child's future status to be implemented at once.

A further indication of Congressional intent that an actual decision be made at the hearing was the following statement of Senator Cranston distinguishing the dispositional hearing from the yearly judicial "reviews" then in effect in several states:

> Mr. President, the provision for a dispositional hearing after a set period of time is, I believe, of critical importance. One of the prime weaknesses of our existing foster-care system is that, once a child enters the system and remains in it for even a few months, the child is likely to become "lost" in the system. Yearly judicial reviews of the child's placement too often become perfunctory exercises with little or no focus upon the difficult question of what the child's future placement should be. This provision requiring a dispositional hearing after a child has been in foster care for a specific period of time should assist States in making the difficult, but critical, decisions regarding a foster child's long-term placement."

125 Cong. Rec. 29942 (October 29, 1979) (Statement of Senator Cranston)

This statement, as well as the language of the statute, suggests that the decision must actually be made after considering various options for the child's permanent future status. The listing of various permanency planning options with the language "including, but not limited to" suggest that the court or hearing body must consider at least all of those options although others might be considered as well. Thus it appears Congress intended that all the options specified by P.L. 96-272 be available to the decision-maker at the dispositional hearing. It would not be legally sufficient for the decision-maker only to be able to authorize return home or continued foster care, for example. However, additional long-term plans, such as emancipation or independent living, for example, might be included in the options available to the decision-maker.

Assuming that Congress did, indeed, intend to require the court or hearing body to make a decision, the question remains whether Congress intended that the decision be binding on the agency or whether Congress merely intended that the court set a case plan goal as the general direction for the agency's actions in the case. One of the causes of confusion in this regard is Congress's use of the term "should" rather than "will" with respect to the child's future status, i.e., whether the child "should" be returned to the parent rather than whether the child "will" be returned to the parent. Despite this amibiguity, the limited evidence available suggests that Congress intended that the decision of the court or hearing body be binding.

First, it is clear that some in Congress were concerned about many agencies' tendencies toward inaction is foster care cases:

> "These specific requirements [the case review system, including the dispositional hearing] focused upon adequate planning and review of the placement of individual children are aimed at eliminating the all-too-common practice of agencies placing children in foster care and then forgetting about them."

126 Cong. Rec. 14767 (June 13, 1980((statement of Senator Cranston). This concern suggests an intention that the decision be binding on the agency and require that steps be taken to carry it out. Otherwise, while there might be a prod to action, there would be no binding legal requirement that steps be taken.

At least one witness apparently believed that the dispositional hearing would result in an order although she believed that even this was insufficient to insure that the decision be carried out:

> "Third, and this, we think is very important - the 18 month dispositional review mechanism must have some kind of built-in follow-up to ensure reporting back to the body doing reviews to make sure that there is compliance. There must be some continued check on the bureaucracy to make sure that there is not simply a dispositional order saying free this child for adoption and no further follow-up because we can predict that the child may not be freed for adoption."

Hearings on Legislative Proposals Amending Title XX Social Services Programs, AFDC Foster Care and Child Welfare Services Programs Before the Subcommittee on Public Assistance and Unemployment Compensation of the House Committee on Ways and Means, 96th Cong., 1st. Sess. 139 (1979) (statement of Jane Knitzer, Project Director, Children's Defense Fund).

Congress did require that further dispositional hearings be held in the event the child remained in foster care, perhaps to insure compliance with the earlier decision. This suggests an intention to require a decision which would be carried out, with a further hearing to insure compliance to modify the plan if it proved unworkable.

In addition, another reason for concluding that Congress intended that the decision be binding was the fact that the state legislation on which the federal requirement

was based required a binding decision. Conversations and correspondence with Congressman George Miller and his legislative aide, John Lawrence, have confirmed that the California statute was the model on which they relied in drafting the dispositional hearing requirement. The dispositional hearing requirement then in effect in Shasta and San Mateo counties in California provided legal standards for the decision on the child's future status, established a preference among the alternatives, and required the court to issue an order to effectuate its decision. Congress chose not to require quite such a highly structured scheme as is provided by the California statute but it is reasonable to conclude that Congress intended to require the minimum elements of that statute: that a binding decision be made about the child's future status at or before 18 months in care.

It is also clear that further court action may be necessary to finally effectuate the decision made. Questions have arisen whether Congress intended that the decision actually be effectuated at the time of the dispositional hearing - i.e., whether termination of parental rights should be ordered at that time.

Under procedures in effect in most states it would not be possible to terminate parental rights or establish a guardianship or finalize an adoption at the dispositional hearing itself, although a termination of parental rights proceeding might serve for a dispositional hearing. Separate legal proceedings are generally required for each of these steps. Different parties may be involved in the guardianship and adoption cases. Often guardianship and termination of parental rights cases must even be heard in a different court. While the original abuse/neglect case

may have been heard in juvenile or family court, in some states guardianship proceedings are heard in probate court and termination of parental rights cases are heard in a district or circuit court. This may be a partial explanation of the term "should". That is, the court could decide what "should" happen but it would take another judicial proceeding to determine the actual outcome. In any event it is clear that the court could choose the option which may than be pursued, even though further judicial or other procedures may be required to effectuate it.

Congress apparently intended not only that a court or hearing body make a decision about the child's future status, but that the agency also be bound to take steps to implement that decision. Thus, a recommendation rather than a binding decision is not sufficient. Further, P.L. 96-272 does not appear to preclude an agency from seeking a later change in the status of the child if the decision proved unworkable - for example, if a termination of parental rights case was pursued but was lost in court or if a relative appeared who was willing to become the guardian of a foster child.

2.2.4. <u>What is the meaning of the permanent alternatives to be considered at the dispositional hearing</u>?

P.L. 96-272 requires the decision-maker to determine the future status of the child:

> "including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be place for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis."

Social Security Act §475 (5) (C), 42 U.S.C. §675 (5) (C) (Supp. V 1981).

A variety of questions have arisen concerning the above options. For example, states have asked when a child can be placed in foster care for a specified period. For how long? How many times? What "needs or circumstances" justify long-term foster care? What is the difference between these two provisions? When might "guardianship" be used and what is the precise meaning of the term?

2.2.4.1 Continuation in foster care for a specified period

To begin with, it is clear Congress did not intend children to stay indefinitely in temporary foster care. The option of continuing a child in foster care requires that the continuation be for a specified time. The House Committee Report suggests that Congress intended a general limit of six additional months and believed this was an appropriate arrangement except when some special circumstances prevented immediate return to the parent. H.R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979).

While it is not completely clear, it appears Congress may have intended a six month limit on extended foster care unless it was possible to point to some very specific factor such as a soon-expected release from jail to extend it beyond that point. Further, it seems Congress intended there to be some reason to believe return home was a real possibility before using the extended temporary foster care option. Reluctance to pursue a termination case or some other permanent resolution of the case would not be sufficient reason for selecting this option, nor

would a general hope of parental involvement at some unspecified point in the future.

The committee and conference reports accompanying P.L. 96-272 do not specify how many times a child may be returned home and placed in foster care again without a dispositional decision being made. State law and federal regulations should set out standards in this area. To ensure comformance with congressional intentions it would be appropriate to require a dispositional hearing after a combined total of eighteen months in foster care. Foster care could be extended for a specified period if it appeared that there was hope for rehabilitation of the parents.

2.2.4.2 Foster care on a permanent or long-term basis

Long-term foster care was clearly not the status for a child preferred by Congress. It is clear that Congress did not intend long-term foster care to be an option to be considered on an equal footing with adoption or return home, for example. The House Report indicates that:

> "Long-term foster care should be regarded as an option only when neither a return to the family, nor adoption is possible."

H.R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979)

This report also indicates that a child could be placed in a long-term foster care placement "because the child cannot or should not be returned home or placed in an adoptive home." Ibid. The act specifically provides that long-term

foster care can be chosen at the dispositional hearing only because of the child's "special needs or circumstances."

For example, the child's strong emotional bonds to his or her own family and need to maintain them and the absence of any subsidy available in guardianship situations may mean that a long-term foster care arrangement would be the best solution for an older child. The fact that it takes more case worker time to locate an adoptive home and finalize an adoption than to continue a child in long-term foster care would not justify long-term foster care as the choice for the child when it was not in the child's best interest.

By providing for statutory preference, state laws can conform to the congressional preference for return home or adoption as permanent options for a child. This point can be reinforced by requiring the court to make a written finding setting forth the relevant special needs or circumstances of the child whenever authorizing long-term foster care.

Further consideration should be given to what exactly is meant by being "continued in foster care on a permanent or long-term basis." Given Congressional concern over establishing a permanent and stable home for each child, it is unlikely that Congress intended to approve, with this language, a child's continuation in temporary foster care in the course of which the child could be shifted from home to home without any prior court hearing and without any protection for the stability of the relationship between the child and the long-term foster parent. Instead, it would appear that Congress was contemplating a special, more protected form of long-term foster care. The California statute on which this section

of P.L. 96-272 was based establishes a preference for return home, adoption and guardianship, in that order. It goes on to provide:

> "If the court finds that the minor is not adoptable and that there is not a suitable adult available to become the legal guardian of the child, the court shall order the county welfare department or probation department to facilitate the placement of the minor in a home environment that can reasonably be expected to be stable and permanent. When the minor is in a foster home and the foster parents are willing and capable of providing a stable and permanent environment, the minor shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the foster parents."

Cal. Welf. & Inst. Code §366.25 (c) (1982) (formerly 366.5 (b) (3)).

The California statute notes exceptions to the preference for adoption (1) when there are strong ties with the parents, which have been maintained by visitation and which it would be beneficial to the child to maintain; (2) when a child over age 12 objects to terminating parental rights or (3) when the minor's foster parents are unable to adopt but are willing to provide a permanent and stable home. These also might be considered "special needs or circumstances" which would justify consideration of long-term foster care as a permanent placement option.

It would appear that Congress intended long-term or permanent foster care to mean a stable and protected relationship with a single set of foster parents for the child's minority. Maine and Virginia, for example, both have special statutory provisions for long-term foster care which gives the long-term foster parents more decision-making authority with respect to their foster child than "temporary" foster parents ordinarily have. Va. Code §§63.1-2061, 63.1-206, 16.1-228(P) (Supp. 1982) and Me. Rev. Stat. Ann. tit. 22, §4064 (Supp. 1981). In Virginia, this relationship is established by court order while in Maine it is established by written agreement between the agency and foster parents. Agency regulations may also establish a long term foster care option, providing additional rights and protections for long-term foster parents, for example. See M. Hardin, Legal Placement Options to Achieve Permanence for Children in Foster Care in Foster Children in the Courts (M. Hardin ed., 1983) and D. Dodson, The Legal Framework for Ending Foster Care Drift: A Guide to Evaluating and Improving State Laws, Regulations and Court Rules, 11-1-11-24 (1983).

2.2.4.3 Legal Guardianship

At several other places in P.L. 96-272 "legal guardianship" is referred to as an appropriate permanent plan for a foster child. For example, the six month reviews must project a likely date by which a child may be "returned home or placed for adoption or legal guardianship." 42 U.S. C. §675 (5) (B) (Supp. V 1981). The statute also refers to service programs designed to faciliate return home or placement for adoption or legal guardianship. 42 U.S. C. §627 (a) (2) (C), 627 (a) (1) (Supp. V 1981). These references suggest that legal

guardianship should be considered an appropriate "future status" for a child under the dispositional hearing requirements of P.L. 96-272. However, the term guardianship has several meanings under state law and not all of them would describe an appropriate permanent plan for a child.

In some states the term guardianship or permanent guardianship is used to describe a child's status when the child's parental rights have been terminated and the child is in the permanent legal custody of an agency. This is the case, for example, in Michigan. However, the Congressional purpose in enacting the dispositional hearing requirement was to ensure for each child a permanent, stable home with a family. Obviously, this form of permanent legal custody with an agency does not establish a permanent relationship with a family.

Rather, it would appear that Congress was anticipating a type of guardianship which would give an individual or couple parental authority over a child. Such proceedings are often used for children whose parents have died or when a relative must replace the parent because of the incapacity, disinterest, unfitness or unavailability of the child's own parent. While the adult in these cases may be referred to as "legal guardian" or "legal custodian" or some other term, the statute provides that the responsible adult assumes decision-making authority for the child free of agency authority or intervention. This type of relationship is generally established by court order and does not require that parental rights be terminated. States vary in the definition of residual parental rights that remain with parents, in the criteria for ending guardianship and in the degree of supervision over the

legal guardianship once established. When used as a permanent placement for a foster child it would be desirable for the court order establishing the guardianship to reflect the intention that the placement is expected to be permanent. A fuller discussion of the use of guardianship as a permanency planning option may be found in M. Hardin, Placement Options to Achieve Permanence for Children in Foster Care in Foster Children in the Courts (M. Hardin ed. 1983) and M. Garrison, Why Terminate Parental Rights?, 35 Stan. L. Rev. 401 (1983).

A more thorough discussion of the meaning of the term "legal guardianship" as used in P.L. 96-272 may be found in M. Hardin, Several Perplexing Legal Issues Raised by the Adoption Assistance and Child Welfare Act of 1980, 11-17 (1981).

One particular problem that arises with respect to this permanent placement option is that as a general rule no financial assistance is available to a legal guardian while financial assistance is available through foster care payments to long-term foster parents and through adoption subsidy to those who adopt eligible foster children. Under P.L. 96-272 the guardian is not eligible for foster care payments because the agency is no longer responsible for the child's placement and care. Social Security Act §472, 42 U.S.C. §672 (Supp. V 1981). In addition, the guardian, not having adopted the child, is not eligible for adoption subsidy. Unrelated guardians are not even eligible for AFDC benefits. Social Security Act §406 (2), 42 U.S.C. §606 (a) (Supp. V 1981). In the vast majority of states this means that legal guardianship is a viable permanency planning option only when there is a potential guardian who is able and willing to provide full financial support for the child.

The lack of financial assistance available for this permanency planning option is unfortunate because guardianship is an effective method for allowing an adult to assume responsibility for the child free of state intervention.

2.2.5. What is the meaning of the requirement that dispositional hearings be held within eighteen months and periodically thereafter?

Public Law 96-272 requires that a dispositional hearing be held "no later than eighteen months after the original placement and periodically thereafter during the continuation of foster care...." Several questions have been raised by this provision. They include: Why was eighteen months chosen as the time period? Can the hearing be sooner? Is it adequate to measure the time for a hearing from the date the court entered its disposition order following a finding of abuse or neglect? What does "periodically thereafter" mean? Why can there be subsequent hearings if the decision is to be final? May the six month reviews be combined with this hearing or substituted for it?

Congress, which is concerned with insuring a permanent and stable home for each foster child, chose eighteen months as the time frame for a decision on the child's future status because they were aware of studies which had found that children who remained in foster care eighteen months or longer were rarely able to return home. See, for example, H.R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979):

"Studies have shown that most children who remain in foster care for more than eighteen months are likely to remain in such placement until majority, regardless of whether such continued placement is the most desirable option for the particular child."

Nothing in the legislative history suggests that Congress intended to prohibit states from requiring that a decision be made at an earlier time. This is made clear by the language that the hearing is to be held "no later than eighteen months..." Nor does anything in the legislative history suggest a requirement that the state agency, court, or review body wait until the time of the dispositional hearing to make a decision on the best permanent plan for the child's future or to take steps to carry out the plan. Rather, it is an outer time frame for decision-making with states free both to require an earlier decision in all cases and to make earlier decisions in individual cases.

However, it is also clear that Congress did not intend that the "disposition hearing", which is held shortly after the trial of an abuse/neglect case to determine whether the child should return home at that time or be placed or continued in foster care temporarily, be used to meet the dispositional hearing, or permanency planning hearing requirement. The use of the term "dispositional hearing", while confusing, is understandable. It was the term used for the decision-making, permanency planning hearing under a California statute in effect in two demonstration counties at the time P.L. 96-272 was developed. See. Cal. Welf. & Inst. Code §366.5 (1978). That legislation was the model relied on by the Congressional sponsor in drafting the dispositional hearing requirement of P.L. 96-272. California has since expanded the requirement statewide and now uses the term "permanency planning hearing."

Nothing in the legislative history suggests that Congress meant something other than the date the child was removed from home as the measuring date for determining when eighteen months has passed. The legislation specifically refers to the date of original placement. Typically, a child is placed in foster care, or in a shelter and then in foster care, when removed from home on an emergency basis. The time that elapses between the child's initial removal and adjudication of the abuse or neglect case varies enormously. It may be as long as a year in some cases, while in some areas, trials are held in a matter of weeks. Periods of one to three or four months are probably more typical in most parts of the country. The disposition hearing may be held a month or more after the trial. Orders entered at the initial disposition hearing, therefore, are apt to be entered some months after the child has entered foster care. As a result, a hearing held eighteen months after the court enters a post-adjudication placement order will not be held within eighteen months of the time the child entered foster care and thus, will not meet the requirement of P.L. 96-272 that these hearings be held within eighteen months of original placement. Virtually the only way for a state to insure that the hearings are held in a timely fashion is to require that they be held within some time period measured from the date of initial placement.

Congress gave states leeway in setting the time for further dispositional hearings but did intend that children were not to be left in care indefinitely without further scrutiny of their cases. So long as the child remains in foster care further hearings are needed to insure a permanent placement; these hearings are needed to insure that decisions are being complied with and further legal steps are proceeding according to the review decision. With most of the choices of

the child's future status further steps are necessary to implement the decision. Adoptive parents must be found and termination of parental rights or guardianship petitions must be filed, for example. These plans can fall through - potential guardians may back out, a termination of parental rights case may be lost - and there would be a need for another decision on the child's future status. There had been testimony in Congress that some kind of follow-up hearing was necessary to ensure that the court's dispositional order was carried out:

> "Third, and this, we think is very important - the 18 month dispositional review mechanism must have some kind of built-in follow-up to ensure reporting back to the body doing reviews to make sure that there is compliance. There must be some continued check on the bureaucracy to make sure that there is not simply a dispositional order saying free this child for adoption and no further follow-up because we can predict that the child may not be freed for adoption.
>
> "So, in thinking through the components in the dispositional review, some follow-up mechanism is absolutely crucial."

Hearing on Legislative Proposals Amending Title XX Social Services Programs, AFDC Foster Care and Child Welfare Services Programs Before the Subcommittee on Public Assistance and Unemployment Compensation of the House Committee on Ways and Means 96th Cong., 1st. Sess. 139 (1979) (statement of Jane Knitzer, Project Director, Children's Defense Fund).

It appears that the requirement that further dispositional hearings be held "periodically thereafter" was an effort to provide such a follow-up mechanism. While the six-month reviews would be continued for these children if they remained in foster care, the six month reviews would not be enough to ensure external scrutiny of the case since they could be before an agency review panel. It would take a further "dispositional hearing" before a court-appointed or approved body to accomplish that external review to see if the determination was carried out.

Further, for children in long term foster care, the situation may change so that a parent unexpectedly becomes able to resume care of child who would like to live with the parent or a relative may become willing or able to adopt. It appears that Congress wanted to insure further decision-making on the future status of those children who remained in foster care by requiring states to hold hearings in their cases on a periodic basis.

Nothing suggests that Congress intended to require a separate six-month review and dispositional hearing at the time of the scheduled dispositional hearing. It would appear that the dispositional hearing, focused on decision-making would be a substitute for the six-month review. However, the six month review, which focuses on assessing progress and projecting a time for return home or adoption or guardianship, would not appear to be a substitute for a dispositional hearing with a decision required at the time of the hearing.

2.2.6. Which children are covered by the dispositional hearing requirement?

Public Law 96-272 provides that in order to be eligible for additional payments for child welfare services under Title IV-B, the state must implement "a case review system ... for each child receiving foster care under the supervision of the State." [emphasis added] The dispositional hearing is part of that case review system, Social Security Act §427 (a), 42 U.S. C.A. §627 (a) (2) (B) (Supp. V 1981)(emphasis added).

Questions have arisen as to precisely which children are covered by the dispositional hearing requirement. For example, questions have arisen as to how this provision can apply to children in voluntary placements when they are not under court jurisdiction. Does the provision apply to children in long-term foster care? Children whose parental rights have been terminated? Children placed with relatives? Children who are placed for adoption but the adoption has not yet been finalized?

Prior to the passage of P.L. 96-272, most states had no form of court review for children who were placed in foster care without judicial proceedings pursuant to a written agreement between the parents and the agency. Because there was no statutory mandate for any court review or supervision by the juvenile court of such children, the court simply had no jurisdiction over children voluntarily placed in foster care. Also, prior to passage of P.L. 96-272 states could not receive federal reimbursement for the costs of foster care for children voluntarily placed in care by their parents. A few states, however, did have an

elaborate scheme for court review. See, e.g., N.Y. Soc. Serv. Law §392 (McKinney Supp. 1982).

P.L. 96-272 changed the prior law to allow states to obtain reimbursement for foster care costs for children voluntarily placed in foster care provided certain conditions were met. Among those conditions was a requirement that the case of each voluntarily placed child be reviewed by a court after the child had been in care for 180 days to determine whether continued foster care placement was in the child's best interest.

At the same time, Congress required that children voluntarily placed in foster care be covered by the case review requirements of P.L. 96-272, including the dispositional hearing requirement. First, they are within the definition of children covered by the case review system because they are "receiving foster care under the supervision of the State". Substantial numbers of children are placed in foster care by this means. The fact that Congress was specifically aware of the situation of voluntarily placed children, required another form of court review of their cases in order to get federal reimbursement (i.e., the 180 day hearing), and did not specifically exempt them from the case review requirement all indicate that dispositional hearings are required for voluntarily placed children.

Whether or not states claim federal reimbursement for children who are in voluntary foster care placement they must either limit the maximum time in voluntary foster care to less than eighteen months or make sure that courts are empowered and required to provide an eighteen month dispositional hearing for non-judicially placed children.

Ordinarily this must be done by statute because the juvenile court will lack jurisdiction or authority with respect to voluntarily placed children and therefore cannot issue decisions on its own or appoint or approve another body with authority to do so.

While the federal law does not require this, it would be desirable for states to modify their intake procedures to ensure that parents are aware that allowing their child to continue in voluntary foster care could result in a petition for termination of parental rights or legal guardianship after eighteen months.

Children who are still in foster care following termination of parental rights proceedings or following voluntary surrender of parental rights are also covered by the dispositional hearing requirement. Until they are actually placed for adoption or guardianship, they are still in state supervised foster care and, thus, are entitled to a dispositional hearing under the explicit language of the act. Further, as a practical matter court involvement may be necessary to insure that a plan is being implemented - for example, that adoptive parents are being sought.

Once the child has been placed for adoption, however, a dispositional hearing or further dispositional hearing should not be required because the child is no longer in state supervised foster care. This is the position adopted by regulations of the Department of Health and Human Services. Adoption subsidy can begin following an interlocutory decree of adoption and prior to the final decree. Once the child is placed pursuant to an interlocutory decree of adoption and thus no longer in

foster care the requirement should end. However, if the child is placed in a "legal risk" adoptive placement or in a "foster-adopt" placement - i.e., placed as a foster child with potential adoptive parents prior to termination of parental rights - the requirement would continue in effect until an interlocutory adoption decree is issued.

A similar question arises with respect to children placed with relatives by court order in an abuse/neglect case. Are children who are with relatives "receiving foster care under the supervision of the state?" In some cases they may receive foster care payments and thus be at least nominally under the supervision of the state foster care agency. In other cases, because custody was placed with the relatives rather than with the state foster care agency, the agency may exercise no supervision over the case although the court would still have supervisory authority in the case. Is court supervision sufficient to trigger the dispositional hearing requirement? The answers to the questions are not clear.

Finally, a question arises as to what Congressional intention was with respect to children in long-term foster care. They, too, are "receiving foster care under the supervision of the State." Yet, Congress specifically recognized long-term or permanent foster care as a permanent placement option in appropriate cases. Did that mean that in cases in which the court made a conscious and considered decision to place the child in long-term foster care as a permanent placement no further dispositional hearing are required? The Children's Bureau has decided that the answer is "yes" - no further dispositional hearings are required in cases in which long-term foster care is the permanent placement for the child.

The Department of Health and Human Services regulations have interpreted the act not to require further dispositional hearings for children who are placed in a "court sanctioned permanent foster family home placement with a specific care giver" for so long as the child remains in that home. 45 C.F.R. §1356.21 (e) (1). This exception would appear to apply only in situations in which 1) the child was placed in a home rather than in an institution, 2) some arrangement was made to assure additional protection to ensure permanence for the arrangement such as a court order or a written agreement between agency and care giver, and 3) the court sanctioned the specific arrangement.

Other advocates argue Congress intended that children in long-term foster care are to be covered because of the explicit language of the statute and should be covered because long-term foster care is a less desirable permanent placement option than return home or adoption. See Allen, Golubock & Olson, A Guide to the Adoption Assistance and Child Welfare Act of 1980, in Foster Children in the Courts 600 (M. Hardin, ed. 1983)

3. State Statutory Survey Results

The following sections present an analysis of the statutory provisions for the fifty states and the District of Columbia which most closely resemble the P.L. 96-272 dispositional hearing requirement. The sections of this chapter are organized to discuss the subjects explored in the charts on the laws of each of the fifty states which are found in Appendix A, Summary of State Statutory Provisions Closest to P.L. 96-272 Dispositional Hearing Requirements. When a reference is made to the law in a particular state a correct statutory citation may be found by referring to the chart on that state.

Neither the charts themselves nor the textual analysis that follows should be taken to be a statement of whether a particular state is in compliance with Public Law 96-272. It was learned from the fifty-state telephone survey and site visits that a number of states have filled in gaps in state statutes through court rules and the social service agency regulations on how cases would be handled. That is, in some states, hearings are actually taking place which are not "guaranteed" by statute. In addition, it was found that the mere fact that a statute specified a particular procedure did not guarantee that that procedure was being carried out by all judges in all parts of the state. Nonetheless, state statutes are the most binding form of policy directive, the most subject to public scrutiny, and the most likely to be followed by the courts. For these reasons, this analysis is pursued.

Throughout this discussion of survey results it is assumed that Congress intended the court or court-appointed or approved body to decide the child's future status by eighteen months. It assumes and supports the requirements

of P.L. 96-272 and does not consider whether some other form of dispositional hearing or review would be preferable.

3.1 Procedure -- What proceeding used by the state is closest to the P.L. 96-272 dispositional hearing requirement?

Several types of statutory provisions are currently being used by states to meet the Public Law 96-272 dispositional hearing requirement. Our review of state legislation on all forms of foster care review has revealed that while there has been considerable modification of laws in the light of P.L. 96-272 dispositional hearing provisions, there has been relatively modest legislative activity since 1980 designed to create special statutory procedures that precisely track the dispositional hearing requirement. Approximately 17 states now have statutes which require the court or a court-appointed or approved body to make a selection at a specified point in time from among permanent placement alternatives for the child, at least one of which is a decision that termination of parental rights should be pursued. Some of these 17 statutes pre-dated Public Law 96-272. A number of the other states which have made legislative changes in this area since 1980 have simply moved to shorten the time frame for a pre-existing review procedure to bring it within the 18 month framework specified by P.L. 96-272 or amended procedures to include more children rather than changing the nature of the existing procedure.

Table 3-1 shows the states which use each type of statutory provision. A fuller discussion of the various issues raised by these procedures is found in the sections that follow. In particular, there is a more complete disucssion of the decisions required in Section 3.2, below.

If states have passed new legislation they have been categorized according to the new legislation even though it may not go into effect for several months.

Table 3-1. Statutory Procedures Most Closely Approximating P.L. 96-272 Dispositional Hearing Requirement in Use By States

Proceedings in which permanent future status must be chosen for child

California
Missouri
Florida
Nevada
Hawaii
New Mexico
Indiana
New York
Iowa
Oklahoma
Louisiana
South Carolina
Maryland (by court rule)
Tennessee
Michigan
Vermont
Minnesota*

Periodic judicial proceedings with permanency planning focus

Arizona
Texas
District of Columbia

Virginia
(term. focus after 18 mo.)
Nebraska
Washington
North Carolina
West Virginia

Periodic judicial proceedings to "review" children under court jurisdiction

Alaska*
Maine
Arkansas
Minnesota*
Colorado
New Hampshire
Illinois
Utah

Judicial proceedings to extend foster care order; order expires at a specified time unless action is taken to extend it

Alaska
Minnesota*
Connecticut
New Jersey*
Georgia
North Dakota
Idaho
Wisconsin

* State is included in more than one category because there is more than one relevant review procedure.

Table 3-1. Continued

Report only or report plus judicial discretion to schedule a hearing

Delaware
Kansas
Ohio
Kentucky*
Oregon*
Mississippi*
New Jersey*

Judicial hearings on motion of a party

Alabama
Rhode Island
Massachusetts
South Dakota
Mississippi*
Oregon*
Pennsylvania

Periodic review by review boards or other court-appointed or approved bodies

Kentucky*
Montana

No statutory proceeding

Wyoming

* State is included in more than one category because there is more than one relevant review procedure.

3.1.1 Proceedings in which a permanent future status must be chosen for the child

Seventeen states have now passed legislation requiring that a decision be made about the permanent future status of the child within a specified time frame. These states are in this category. However, several of these states have statutes that pre-existed P.L. 96-272 and do not include all the P.L. 96-272 alternatives, but require consideration of termination of parental rights by a specific point in time for at least some groups of children. Approximately half these states allow orders for continued foster care for an unspecified rather than a specified time period.

3.1.2 Periodic judicial proceedings with a permanency planning focus

Most of the eight states in this category have statutes requiring periodic foster care review which specify permanency planning factors to be considered by the court. They may require the court to determine whether there is an appropriate case plan goal, for example. These statutes do not, however, require that a decision be made on the future status of the child by a specified date. Also included in this category are states such as Virginia and Texas in which the court has discretionary authority to terminate parental rights following a review but no decision on the child's future status is actually required, nor are permanency planning factors actually required to be considered.

3.1.3 Periodic judicial proceedings to "review" all children under court jurisdiction.

The eight states in this category have statutes requiring annual or other court "review" of the cases of foster children under court jurisdiction as the primary form of court oversight. These statutes typically do not require a particular focus on permanency planning options for the child at that time. In some of these states a "review" may be required by the statute but it is not clear whether this means that a hearing must be held.

3.1.4 Judicial proceedings to extend foster care order; order expires at a specified point in time unless action is taken to extend it

The seven states in this category have statutory provisions governing foster care orders issued at initial disposition which provide that foster care orders expire at a stated point unless extended by court order. In some states the agency must file a motion or petition to extend; in others the court may extend the order after a hearing.

If nothing is done to extend the order, it expires and the child must be returned home. However, for children who are not able to return home, these statutes generally do not require the court to consider and decide on permanency planning alternatives such as termination/adoption, long term foster care or guardianship. The proceedings in these cases are probably quite similar to those in the prior category. However, orders in these states end if not extended while those in the states in the prior category would presumably continue if no action were taken.

3.1.5 Report only or report plus judicial discretion to schedule a hearing

In the seven states in this category the agency or review board is required by statute to report to the court periodically on the status of the child and in some the court may hold a hearing with respect to the report if it chooses to do so. The primary difficulty with such proceedings is that in many cases they are paper proceedings only although the report may focus on permanency planning concerns. They often do not provide parties with an opportunity to be heard. In some states parents are not required to receive a copy of the report.

3.1.6 Judicial hearings on motion of a party

The seven states in this category have statutory provisions for a hearing on the status of a child on the motion of a party. The motion might be to modify a prior order or may simply be for a hearing to review the case. The most serious weakness of these statutes is that they do not insure an independent examination of the cases of each child, but only those for whom a party seeks review. On the other hand, states may develop a routine of the agency seeking a hearing in each pending case, as Massachusetts reports having done. In addition, these statutory provisions generally do not require the court to select or approve a permanent plan for the child.

3.1.7 Periodic review by foster care review boards or other court-appointed or approved bodies.

For two states, the review board most clearly approximates the P.L. 96-272 "dispositional hearing"

requirement. However, such statutes may fall short of fully satisfying the Act's requirements in several ways. Foster care review boards may or may not be appointed or approved by the court. Non-judicial bodies may lack authority to issue a decision about the child's future status which will bind the agency and therefore cannot "determine the future status of the child." And, as a general rule, few traditional due process protections are required by statute for these proceedings. On the other hand, often their statutes do mandate a focus on whether there is a permanent plan for the child and whether it is suitable.

3.1.8 No statutory proceeding

The one state in this category has no statutory procedure at all for any form of review by a court or a court-appointed or approved body.

3.2 Decision Required - What decision is the court or court-appointed body required to make at this proceeding? What is the statutory standard for this decision?

Probably the key concern of Congress in establishing the dispositional hearing requirement was to ensure that a decision was made on the child's permanent future status within 18 months of the time the child entered care unless, because of some exceptional circumstance, it was advisable to continue the child in foster care for a specified period of time. Current social work practice would suggest that to make an adequate decision about a permanent plan for a child a court would need to consider at least those alternatives mentioned in P. L. 96-272--return home, continued foster care for a specified period, termination of parental rights and adoption, guardianship, and, in exceptional circumstances, long-term foster care.

Nonetheless, in a very substantial majority of states, the statute establishing the review or the dispositional hearing neither requires a decision on the child's permanent future status selected from among specific permanency planning alternatives nor requires consideration of such alternatives. In only seventeen states is the court or court-appointed body required to decide the child's future status by selecting from among alternatives that include the possibility of terminating parental rights. See Table 3-1 and accompanying discussion. In an additional handful of states the court or court-appointed body is required by statute to consider permanency planning alternatives for the child at a review proceeding but is not actually required to make a decision on the child's permanent future status at any specified point in time. These are generally the eight states included on Table 3-1 under "periodic judicial proceedings with a permanency planning focus." These statutes are discussed in more detail below.

In a majority of states either no particular decision is required by statute at the review stage or the decision required is not focused on permanency planning for the child. States with similar kinds of review as described in Section 3.1, above, generally require similar kinds of decisions. For that reason, this discussion is broken down into the same categories.

3.2.1. Proceedings in which a permanent future status must be chosen for the child

Seventeen states have statutes that require their courts or court-appointed bodies to make a decision on the

child's future status from among specified permanency planning alternatives at the review or dispositional hearing. California's statute, an exemplary dispositional hearing statute, is discussed below.

Statutes in several others of the seventeen states require the court or court-appointed or approved body to make a decision from among the alternatives specified in P. L. 96-272 - i.e., return home, termination of parental rights and adoption, guardianship or long-term foster care, or continuation in foster care for a specified period. However, unlike California these statutes generally do not specify a legal standard for decision. All of these states have revised their statutes since passage of P. L. 96-272. These states include Oklahoma, Nevada, Louisiana, Hawaii, South Carolina and Vermont in addition to California. Nevada, however, allows an order for continued foster care without specifying a time limit.

California's demonstration county legislation provided the model for P. L. 96-272's dispositional hearing requirement. That statute has now been extended state-wide and remains a model in clearly requiring a decision on the child's future status and in spelling out criteria for deciding which permanent plan should be selected for a child. The statute is still unusual even among those that require a decision on the child's future status because it does so clearly specify criteria.

Under the California statute the court must first determine if the child should be returned home. The court must order the child's return unless the probation officer proves return would create a substantial risk of detriment to the child's physical and emotional well-being. The

parents' failure to participate in court-ordered treatment is prima facie evidence that return would be detrimental. The court must consider the parents' efforts and the extent to which they cooperated and accepted services offered by the agency. If the court decides the child cannot be returned home and there is not a substantial probability that return will be possible within six months the court must make a permanent placement plan for the child. If the child is adoptable, the court must order the county counsel or district attorney to initiate termination of parental rights proceedings unless the court finds an exception exists making this action undesirable. The exceptions which are considered to make adoption undesirable are: that the parents have maintained regular visitation and the court finds the child would benefit from continuing the relationship; that a child who is age 12 or older objects to termination of parental rights; or that the child's foster parents are unwilling to adopt because of exceptional circumstances which do not include unwillingness to accept legal responsibility for the minor but are willing and able to provide a stable home for the child and removal from their custody would be harmful to the child.

If the court finds the child is not adoptable or should not be adopted, but that there is an adult available who is eligible to be a legal guardian for the child the court must order the agency to initiate or to facilitate guardianship proceedings unless the child's foster parents are unable to be his or her legal guardians due to exceptional circumstances and removal would be detrimental to the child's emotional well-being. If the court finds the minor to be unadoptable and there is no suitable guardian available then the court must order the agency to facilitate the child's placement in a home environment that can be

expected to be stable and permanent. However, the court must not remove the child from foster parents willing to continue custody if removal would be seriously detrimental to the child's emotional well-being due to substantial psychological ties.

Several others of the seventeen states require a decision on the child's status from among alternatives including at least return home, continuation in foster care with no time limit, and termination of parental rights. Generally these statutes do not limit the number of extensions of foster care orders nor require consideration of guardianship or long-term foster care. Typically they do not require that foster care orders be for a specified period nor do they require that if long term foster care is chosen as the child's permanent placement that this decision be based on the child's special needs or circumstances. They do specify that termination of parental rights is an available option even if a decision is not so clearly required as it might be. These states include Indiana, Iowa (decision required), Missouri (decision required), and New York (may order termination of parental rights proceedings for voluntarily placed children).

Some states have somewhat different approaches. In Florida, if at the two year review the court neither returns the child home nor extends the foster care agreement the agency must file for termination. In Michigan, the statute provides that after a child has been in care one year the parents must show their efforts to reestablish a home for the child and show why their parental rights should not be terminated. A subsequent court decision, In re La Fleure, 48 Mich. App. 377 (1973), held that it was improper/unconstitutional to place the burden of proof on the parents in a termination case, however.

In addition to these seventeen states, termination of parential rights is available as an option in Texas, Virginia, West Virginia and Washington but is not required to be considered. In New Jersey the court may order continued foster care with a "recommendation" that termination proceedings be initiated. These states are included in other categories.

Some states require certain findings in addition to the determination of the child's future status. For example, South Carolina requires certain findings on services provided to the parents to facilitate reunification, parents' satisfaction with services, the extent of parental support and visitation and reasons for inadequacies, agency satisfaction with the parental cooperation, and additional services needed to facilitate the child's return home. In Louisiana among other things, the statute requires written findings on why return home or termination of department custody is not possible if the court orders continued foster care placement; a time-table for return home or another permanent placement must also be determined by the court. Requiring these additional determinations and findings serves to focus the court's attention on factors which it is beneficial for the court to consider. This is an alternative approach to binding legal criteria for the decision, these factors being more advisory than binding.

3.2.2. Periodic judicial proceedings with permanency planning focus

Some periodic review statutes have a permanency planning focus but fall short of requiring the court to actually make a decision on the child's future status at the

time of the review. This is the case in the eight states listed in Table 3-1 under this category.

For example, the Arizona statute directs courts to consider the goals of foster care placement and the appropriateness of the plan, the services offered to reunite the family and, when return home is not likely, the efforts which have been made or should be made to evaluate the plan for other methods of care. Priority must be given to reuniting the family first and second to arrange a permanent plan for the child through adoption or long-term foster care or other care appropriate to the child's best interests. Interestingly, in the Arizona site visit, interviews revealed that judges and court referees viewed their role as establishing a case plan goal for the agency to work toward but did not believe they were required to make an actual decision at that time about the child's permanent future status (see Volume II).

The Nebraska statute requires the courts to consider an almost identical set of factors at review. In both states, the court may reaffirm the current court order or direct some other, unenumerated, disposition of the child. Despite the clear focus on permanency planning considerations these statutes fall short of requiring a decision on the child's status at a particular point in time.

Also included in this category are states such as Texas and Virginia whose courts have statutory authority to order termination of parental rights at review but are not necessarily required to consider this option.

3.2.3 Periodic judicial proceedings to "review" children under court jurisdiction

Periodic court reviews required by statute may not require any specific decision at all or may require a decision that does not focus on the child's permanent future status if the child cannot return home. This is the case in the eight states in Table 3-1 under this category. For example, in Illinois, no specific decision is required on review although the statute provides that the court may order a change in custodians or that the child be returned home. In Utah, the statute provides that on a hearing on petition for review (which is mandatory) the court may terminate the placement order or continue the order if continuation is "necessary to safeguard the welfare of the child and the public interest." In Maine the court may make any further order, based on the preponderance of evidence, which was authorized by the original disposition statute. These include protective supervision of the child at home and out-of-home placement, change of custody and emancipation. Termination of parental rights, adoption, guardianship and long-term foster care are not included.

3.2.4 Judicial proceedings to extend foster care; order expires at specified time unless action is taken to extend it

In the eight states in this category the focus of the hearing, by statute, is generally on whether or not to extend the foster care order. Generally no limit is placed upon total time in foster care nor does the statute direct the court to consider such alternatives as termination of parental rights and adoption, guardianship or long-term foster care when the child cannot be returned home.

For example, in Connecticut the foster care commitment may be extended for two years on a finding that the extension is "in the child's best interest" or the commitment may be revoked if the cause for it no longer exists or revocation is in the child's best interest. In Georgia the foster care order may be extended if "necessary to accomplish the purposes of the order" or the order may be terminated if the purposes of the order have been accomplished. In Minnesota, no particular standard is specified for a decision to renew the order.

3.2.5 Report only or report plus judicial discretion to schedule a hearing

The seven states in this category require more varied decisions of the court but still tend not to require a decision on the child's future status. For example, under Kansas law, the agency must file with the court its plan for reintegration of the child into the family and report on its progress every six months. If the court is disssatisfied it may hold a hearing, rescind its prior order, order a new reintegration plan or order any other disposition authorized by the law. These dispositions include placing the child at home under agency supervision or placing the child in out-of-home placement; they do not include ordering initiation of termination of parental rights proceedings and adoption.

3.2.6 Judicial hearings on motion of a party

The seven states with statutes in this category generally do not require the court to determine a permanent plan for the child's future if the child cannot be returned

home. In Rhode Island the court may, at any time, "for good cause shown" revoke or modify its decree giving custody of the child to an agency. In Pennsylvania, on petition, the court must consider altering the conditions of placement or ending placement or, on petition of the child's attorney, the court must order the agency to establish or implement needed services. In Massachusetts, parties may obtain a "review and redetermination" of the needs of the child. None of them focuses on permanency planning considerations.

3.2.7 Periodic review by review board or other court-appointed or approved bodies

See discussion in Section 3.7, below.

3.2.8 No statutory proceeding

Wyoming, with no statutorily required proceedings does not require any specific decision by statute.

3.2.9 Special problems with legal criteria for decisions

While most states do not spell out criteria for decisions on the child's future status apart from general provisions about the "best interests of the child" or "safeguarding the child's welfare," a few have criteria that actually may make it more difficult to accomplish a plan of return home for the child. For example, in New Hampshire parents have the burden of demonstrating to the court not only that the child will not be endangered in the manner adjudicated on the initial petition if returned home but also that they are in compliance with the prior court order and that return is in the child's best interest. In North Carolina, the judge may not return the child home unless

sufficient facts are found to show that the juvenile will receive proper care and supervision. In Illinois, if a child is removed from home because of physical abuse the child may not be returned until a hearing is held on the issue of parental fitness and the court finds that the parent is "fit" to care for the child. Recent standard setting projects in the abuse/neglect area have generally recommended a standard that the child must be returned home unless he or she would be endangered there in the manner that caused the child to be placed in care to begin with. See, for example, Institute of Judicial Administration/ American Bar Association, Standards Relating to Abuse and Neglect, Standard 7.5 (Tentative Draft 1977). The standards found in the described statutes may require parents to show a level of fitness, or parenting ability or adherence to plans beyond that necessary to ensure that the child is not in actual danger. To the extent these standards would keep the child in foster care when the child would be safe at home, they may impede establishing a permanent, stable home for the child.

3.3 Authority - What authority does the court or court-appointed or approved body have with respect to issuing a binding decision?

While P. L. 96-272 does not specifically require that the court or other decision-making body holding the dispositional hearing have any particular authority it does require that decision-maker "determine" the child's future status. Such a "determination" typically requires the decison-maker to have authority to order that the decision be carried out.

The two likely sources of such authority are statutes or some inherent authority of the court. Many would argue that juvenile courts have inherent authority to issue orders with respect to the care and well-being of minors under court jurisdiction unless this power is limited by statute. However, others would argue to the contrary. There are, for example, appeals court decisions holding that juvenile courts may order services for children under court jurisdiction and others holding that courts may not order the agency to provide specific services. Two recent appeals court decisions have held that juvenile courts had authority to order the Florida and Mississippi agencies to initiate termination of parental rights proceedings. In the Interest of J.R.T., 427 So.2d 251 (5th D.Ct.App. Fla. 1983); In the Interest of T, 427 So.2d 1382 (Miss. 1983).

Corresponding to the legal uncertainty about court authority to issue various kinds of orders with respect to children in foster care is the uncertainty and disagreement among both judges and agency staff about court authority to issue various orders. Our site visit interviews and telephone surveys, discussed in Volume I, indicated widespread belief that judges had authority to order a child to be returned home or to be continued in foster care. Forty-six percent of judges believed that they had authority to order the agency to initiate termination of parental rights proceedings; 48 percent believed they did not. A higher percentage of agency staff (80 percent) than judges believed judges had this authority. A higher precentage of judges (seventy-four percent) than agency staff (sixty-four percent) believed the court had authority to order a specific placement for the child, however. There was also significant belief that courts lacked authority to order the agency to initiate guardianship proceedings or to find an adoptive placement.

This variation in belief about the court's actual power also reflects disagreement and tension between courts and social service agencies over what should be the roles of the court and the agency and who should have ultimate decision-making authority with respect to a child. There are disagreements about which decisions are properly in the realm of the law and which are in the realm of social work. Many judges are uncomfortable making decisions they consider to be social work decisions and many agency staff believe the social service agency should retain ultimate decision-making authority.

For all these reasons, it is especially important that statutes clearly specify the authority of the court or other decision-maker to order that the decision be carried out and to issue orders necessary to bring that about if the "determination" of the child's future status is to be effective. There are two statutory sources to be examined for such specific statutory authority: first, the review or dispositional hearing statute itself and, second, the statutory provision specifying alternatives at the initial disposition proceeding. The latter is relevant because in many states the statutory review is a review of the original disposition order or decree and it may be inferred that the options available to the court at the time of the initial disposition are still available at review.

3.3.1. Overview of statutory authority to order decision implemented

An analysis was made of the authority of the court or court-appointed body specified in one or both of these statutory sources. Table 3-2 shows the number of states in

which the decision-maker has authority to order various permanency planning options.

Table 3-2 - Numbers of States in which Court or Court-appointed or approved bodies have certain statutory authority

Order return home	44
Order continuation in foster care with no period specified	38
Order continuation in foster care for a specified period	8
Order termination of parental rights or initiation of termination proceedings	24
Order initiation of guardianship	7
Order long-term foster care	9
Order adoptive placement or efforts to find adoptive home	12
Order provision of services	15

It is clear that in most states courts have the authority to order the child's return home or continued out-of-home placement. In forty-six states, court authority to order the child's return home is specified by statute. In forty-six states courts have statutory authority to order continued foster care for a specified or unspecified period. In only eight of those states must an order for continued foster care be for a specified period.

3.3.2 Termination of parental rights

However, statutory authority for the court to order initiation of termination of parental rights proceedings, initiation of guardianship proceedings, long term foster care or adoptive placement is less frequent. Twenty-nine states have statutory provisions authorizing the court to at least consider termination of parental rights. In only twenty-four states is there authority to order pursuit of this option and in some of these states the court, in fact, has the statutory authority to terminate parental rights at review but is not required to consider this option. Most list termination of parental rights as an alternative the court may select without specifying that the court may order the agency to initiate proceedings. Some, such as Virginia, Michigan and North Carolina, appear to suggest that the court can order termination of parental rights at the disposition or review hearing. Others do not clearly authorize court action with respect to termination of parental rights although they direct the courts' attention to this concern. In the District of Columbia the court must, in some cases, "determine" at the review why no motion to terminate parental rights has been filed but is not required to issue any order in this regard. The New Jersey statute authorizes the court to order continued out-of-home placement with a "recommendation" that termination proceedings be initiated. In both California and New York the court may order the agency to initiate termination proceedings. In New York, if the agency fails to act in this regard the court may then authorize the foster parent to initiate termination proceedings.

3.3.3 Guardianship and long-term foster care

Far fewer statutes grant specific authority to the court to order guardianship proceedings or long term foster care. Only seven states have statutory provisions authorizing courts to order initiation of guardianship proceedings. In nine states courts have specific authority to select long-term foster care as a placement option. In part this is probably related to the fact that few states have a statutory provision governing long-term foster care. However, a few do, notably Maine and Virginia. In most states, guardianship proceedings must be initiated by a petition filed by the potential guardian. Traditionally, potential guardians have proceeded with their own counsel and agencies have not done the legal work involved in this procedure. Perhaps in part for this reason, statutes rarely provide for the court to order the agency to initiate guardianship proceedings. It is also, however, a fairly recent development to use guardianship as a permanent placement option for foster children. Ideally a state would enact a guardianship provision particularly designed to meed the needs of foster children. In California, the court may order the agency to "facilitate" initiation of guardianship proceedings. In practice, this has sometimes meant that the county attorney would represent parties filing guardianship actions.

3.3.4 Adoption

In twelve states the court may order that a child be placed for adoption or that efforts be made to obtain an adoptive placement. In Texas, for children for whom parental rights have been terminated or whose parents have voluntarily surrendered parental rights, the court may order the agency

to attempt to place the child for adoption. In one state the court may order that legal custody of a child be transferred to a different agency for that agency to attempt to find an adoptive placement. In New York the court may direct that a child be placed for adoption in the foster family where he or she resides or with another specific individual. This is an important provision because agency regulations sometimes prohibit consideration of foster parents as potential adoptive parents. Sometimes, too, the agency claims that the court does not have authority to order specific adoptive placement.

3.3.5 Authority to order a specific placement

If it is desired to give a court full authority to make a decision on the child's future status it is necessary to give the court authority to order specific placements for adoption, foster care, long-term foster care or guardianship.

One of the recurring issues in this area is whether courts have authority to order specific placement in a case. In several states, state law appears to specify that the court may order a child placed in the custody of the social service agency but the social service agency may determine the actual placement of the child. Vermont is an example of a state with such legislation. See In re G.F. No. 82-051 (Vt. 1982) which holds that the court may not order the agency to pay for foster care for a child in a particular placement. In other states such provisions have been interpreted to mean there may be no court review following termination of parental rights or voluntary relinquishment of parental rights because the court could not issue an order with respect to placement anyway. Similarly, litigation in

Florida held that while the court could not order children placed with particular foster parents, the court could order that siblings be placed together or otherwise place conditions on the type of placement. Division of Family Services v. S.R., 328 So.2d 270 (1st D. Ct. App. Fla. 1976); Division of Family Services v. State, 319 So.2d 72 (1st D. Ct. App. Fla. 1975); F.B. v. State, 319 So.2d 77 (1st D. Ct. App. Fla. 1975).

However, provisions limiting the court's ability to order a specific placement pose a policy problem with respect to the court's ability to decide on a permanent plan for the child. Often the plan is not just that return home or long-term foster care is generically preferable for a child but, rather, that a specific placement is in the child's interest. Placement with a specific close relative who is willing to become guardian and assume long-term responsibility for the child but does not wish to adopt in order to maintain family harmony with the child's parent may be the plan of choice for the child. Or long-term placement with the same relative may necessitate long-term foster care placement in order to ensure payment for the child's care as there is not a guardianship subsidy available in most states. However, the court might not wish to simply order generic "long term foster care placement" as the plan for the child if under the statute the agency would then be free to place the child anywhere. If the child is not to be placed with the specific relative, termination of parental rights and adoption could be preferable to long term foster care with strangers. One approach, followed in the Florida cases, above, was to order conditions with respect to the placements.

While these statutory limitations on the court's authority may not actually violate P. L. 96-272, they do impede the court's ability to make and effectuate good decisions about the child's future status. This is an area in which agencies have, historically, often taken the lead in attempting to limit the court's authority because they did not want the court to make placement decisions they considered too expensive nor did they want the court to make placement decisions they believed were not in the child's best interests but would be required to carry out. However, courts do not necessarily believe they should have the power to order a specific placement.

3.3.6 Services

In order to fully effectuate the court's decision, particularly when the decision is to return the child home at once or at a specified time in the future, courts need authority to order the provision of services. Some fifteen states have statutes which authorize the court to order that services be provided to the child or family. In Texas, the court may order the state agency or other authorized agency to provide services to ensure that every effort has been made to enable the parents to provide a family for their children. In South Carolina, the court must determine whether additional services are needed to enable the child to return to the parents and, if so, the court may order the agency to provide additional services. In New York the court may make an order directing an authorized agency to undertake diligent efforts to encourage and strengthen the parental relationship. Such an order may include a specific plan of action for the agency, including but not limited to, requirements that the agency assist the parent in obtaining adequate housing, employment, counseling, medical or

psychiatric care. In the District of Columbia, the court may issue orders regarding services not only to the foster care agency but to other agencies. Any District of Columbia agency or any private agency receiving public funds may be ordered to provide any needed services within its authority.

3.3.7 Additional Orders

Some statutes also give courts broad, general authority for further orders. In Utah, the court may issue "other orders" setting forth reasonable conditions to be complied with by the parent, child, custodian, or other parties. In Florida, the court may issue a "protective order" in conjunction with the performance agreement (case plan) setting out reasonable conditions to be observed for a specified period by a person or agency who is before the court. Florida is one of a number of states that give its courts specific authority to require various persons or agencies to file reports with the court on the child's status.

3.4. Procedural Safeguards

State statutory provisions were examined to determine exactly what procedural safeguards were available to parties at the dispositional hearing or court procedures closest to dispositional hearings. The following questions were examined:

1. Is it clear that a true hearing is required by the law rather than a paper review (no parties present) or an ex parte review (with only the agency present)?

2. Are parties required to be notified of the hearing? By what means and how far ahead of the hearing? Must parents be warned of the possible results of the hearing in the notice?
3. Who are parties at the review or dispositional hearing? Are parents, older children and long time foster parents allowed to participate?
4. Is a report on the case required to be filed with the court prior to the proceeding? Are the parents entitled to an advance copy? Is the report admissible in evidence?
5. What is the degree of formality of the hearing? Is hearsay admissible? May witnesses be called? May they be subpoenaed? Must they be sworn? Do parties have the right to present and cross-examine witnesses? What rules of evidence apply?
6. Are the parties, particularly parent and child, entitled to counsel at the proceeding?
7. Must a verbatim record be made of the proceeding?
8. Must the court issue written findings and a written order?
9. May the decision be appealed?

It should be noted at the outset that there are several approaches to determining what procedural safeguards apply to these proceedings. The review or dispositional hearing statute may specify certain procedural safeguards. The juvenile or family code may specify certain procedural safeguards that are available in "all proceedings under this code". These protections are then available in review proceedings as well as other proceedings under the juvenile code. Kansas is an example of a state which takes this latter approach with respect to many procedural safeguards. In the absence of either of these kinds of provisions, one

may infer that procedural protections available at the initial disposition hearing should also apply at reviews or the dispositional hearing. In a few states court rules have been issued which specify procedural protections available to parties. Minnesota, for example, has taken this approach. In the absence of such specific requirements courts may well provide ample procedural protections to parties but there is no assurance that they will.

The existence and nature of procedural protections was one of the areas of greatest disagreement among the various informants. In many cases the agency and judicial respondents disagreed both on which protections were actually provided and on which were mandated by law. Further, frequent disagreement was found between what was reported by judges to be mandated and what the statutes appeared to require. Typically the statutes appeared to require less than was reported to be required by respondents. In attempting to pursue the disagreements further with the expert reviewers from each state, it was clear that there was substantial disagreement in many states over what procedural protections applied. A judge would write "I interpret our statutory requirement of a 'review' to mean that a hearing should be held and I do so but I know that many of my colleagues do not." Or attorneys report that they regularly argue that the rules of civil procedure apply in these proceedings but the judges sometimes agree and sometimes disagree. Similar disagreements affected many procedural rights.

A summary of the findings of our statutory analysis appears below.

3.4.1. Is it clear that a true hearing is required by the law rather than a paper review (no parties present) or an ex parte review (only the agency present)?

The term "hearing" ordinarily implies that parties appear, or have an opportunity to appear, before a decision maker, either personally or through attorneys in order to present their views on the matters which must be decided. See discussion in Chapter 2 of this volume.

Many statutes are clear in requiring a review or dispositional "hearing" or provide that an order can be extended following a "hearing". In other cases the requirements of scheduling and notice make it clear that a true hearing is required. Thirty-four states have such provisions. This number was derived by a special examination of each statute to determine whether a "hearing" was required or whether it was clear from the context. This was a separate procedure from the categorization reflected in Table 3-1. Specifically, some states in the category of periodic judicial proceedings to review children under court jurisdiction do not specifically require a hearing as opposed to a paper "review." For example, statutes in California, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, and Indiana are among the many states specifically requiring a hearing by statute. Thirteen other states require a "hearing" on motion or in the court's discretion.

Some statutes, however, require reports only, or speak in terms of "review" in a context which is either ambiguous about whether a hearing is required or suggest that it is not. Under Arkansas law the court must hold a hearing or "review the case every six months sufficiently to

enter findings of fact to determine whether the order should be continued, modified or terminated." Under New Jersey law the foster care review board, which is not required to hold a hearing, must hold an annual "review" and file a report with the court. Upon "review" of the board's report the court must issue an order "which serves the child's best interest." The court may hold a "summary" hearing when conflicting statements of material facts cannot be resolved, a party requests it or justice requires it. A hearing is required every two years to extend the foster care order. In Kansas a written report on the progress toward case plan goals is required by statute to be filed each six months. The court must "review" the written report. If the court decides progress is inadequate the court may after notice to the parties and a hearing, change its earlier order. In all of these cases the statute does not require a hearing in all foster care cases under the court's jurisdiction.

Those states which provide for a review or hearing on motion of a party, as would be expected, generally provide for a "true" hearing in those cases in which a motion is filed.

While the larger proportion of states provide for hearings for all cases within the court's jurisdiction, a significant number do not.

3.4.2. Are parties required to be notified of the hearing? By what means and how far ahead of the hearing? Must parents be warned of the possible results of the hearing in the notice?

As a general rule, statutes that require a hearing by statute also require notice to the parties. Some

statutes merely specify that a new order will be entered "after notice and a hearing." North Dakota, for example, provides that "reasonable notice and an opportunity to be heard" must be given to the affected parties before the court can extend its order. Others are much more specific in naming the parties to be notified and in detailing the nature of the notice and the method of service. Delaware requires written notice. California and Illinois require notice by certified mail. Florida requires that notice be "served upon" parents. The Kansas statute provides a detailed scheme for personal service of notice.

Time for notice of the hearing varies. Many statutes that require notice do not specify a time. Others suggest reasonable notice. For example, the Alaska statute requires notice "reasonably in advance" of the hearing. Twelve states specify the time for notice. Notice at least ten to fifteen days in advance of the hearing is the most frequent range for those with a specific time period. The shortest specified time was five days, the most, thirty days. California was the only state which required both a minimum and a maximum time period for notice, specifying that notice must be given from fifteen to thirty days prior to the review date. This is significant, because a recurrent problem noted in site visits was serving notice on parties, usually parents, at the time of the previous review, often six months ahead of time. Parents may lose or forget the notice by the time six months passes.

Another significant issue is whether parents and other parties must be notified of the possible consequences of the hearing. In fact, since most states have not modified their statutes to provide that the proceeding can result in a court order to initiate termination of parental

rights proceedings, it apparently has not seemed important to provide such a warning. Very few states require that parties be notified of the possible results of the hearing. However, Florida and New York, for example, do require that parents be notified of the alternatives available to the court at the hearing. The New Mexico statute requires that parents be notified of the purpose of the hearing. In California, the statute requires that parents be warned both at the time of initial disposition and at subsequent reviews of the possibility that their parental rights will be terminated if they cannot resume care of the child by the time of the dispositional hearing. Warnings may be less important when parties are represented by counsel but are nonetheless significant.

3.4.3. Who are parties at the review or dispositional hearing? Are parents, older children and long time foster parents allowed to participate?

Many statutes simply provide for notice of the review or dispositional hearing to be provided to "the parties." Presumably this includes at least parents and the agency and may include the child. The specific categories of people most often named as parties in the review or dispositional hearing are parents, the agency and older children. Parents are almost universally named when parties are specified. They are explicitly given the right to notice in thirty-one states. Older children are named as parties to be notified of proceedings in twenty-one states. In eight, notice is limited to children twelve and older; in two, to children fourteen and older and in one to "mature" children.

Some states provide that foster parents or current custodians must be notified of the proceedings. Sixteen states have such a specific requirement with respect to foster parents. This is significant because foster parents may have valuable information about the child and many ultimately can provide a permanent home for a child who cannot return home. By way of example, New York law provides that foster parents in whose home the child has resided for at least eighteen months must be notified of the proceedings. Arizona gives a right of notice and participation to foster parents in whose home the child has lived for six months or with whom the child is living at the time of the hearing. Some statutes allow the court to grant party status to other interested persons; this may include foster parents among others. For example, in Delaware the court must send notice of judicial hearings on review petitions to "other interested parties." Such a provision is a helpful way to include other persons with a serious interest in the child's welfare such as relatives. Other parties sometimes required to be notified include an agency other than the state agency in charge of the child's placement; service providers; parents' and child's attorneys; and the child's guardian ad litem.

3.4.4. Is a report on the case required to be filed with the court prior to the proceeding? Are the parents entitled to an advance copy? Is the report admissible in evidence?

Twenty-nine states have a statute requiring that some form of report be filed with the court either in conjunction with a review proceeding or independently. Statutory requirements for the reports vary from very general to very specific. Typically, those states which

require a report in conjunction with a motion to extend the foster care order require a fairly general report while those which require a report in conjunction with a review or with a proceeding which must consider permanency planning options for the child are more likely to require that the report address the question of the child's permanent future status.

Those which focus on permanency planning may offer very helpful information to the court. For example, under New Jersey law the citizen's review board must report to the court with a finding whether return home, continued out-of-home placement or initiation of termination of parental rights proceedings is in the child's best interests. If continued foster placement is recommended, the report must state whether the placement plan is appropriate to the child's needs. Under Louisiana's new review and dispositional hearing statute, a case progress report must be filed with the court periodically by the agency. It must address the length of time the child has been in placement; the number of placements; services provided to parents, child and foster parents; a description of visitation by parents and department efforts to aid visitation; parents' progress; barriers to return home including unavailability of services; recommendations of services to return the child home or facilitate another permanent placement; a timetable for return home or other permanent placement; a specific recommendation for a permanent plan for the child if return home is not recommended; an explanation of why another permanent plan is not appropriate if continued foster care is recommended; and compliance of the department with any court orders.

A report from the agency responsible for the child or from the citizen foster care review board can be a very helpful tool to outline for the court the issues presented in a particular case. However, as a matter of fairness, if a report is to be presented to the court, parents and their attorneys and the child's attorney or guardian ad litem should be entitled to an advance copy in order to know the position of the agency and in order to be able to respond to the course of action proposed by the agency.

Nine states have statutory provisions requiring that copies of the report be provided to parents or made available to them. Three have such provisions with respect to older children and three with respect to the child's attorney or guardian ad litem. In addition, in some states where hearings are not required by statute to be held in every case, reports are required to be furnished to parents.

This at least gives them a chance to seek a hearing if they disagree with the report. New Hampshire law requires the agency to file a report at least fourteen days prior to the annual court review and to send copies of the report to all parties. Florida law requires that a copy of the written report be provided to the parents and their attorney of record at least forty-eight hours in advance of the hearing (a very brief time to prepare a response).

Many times there are disputes over the way reports should be treated at the time of the hearing. Should they actually be admitted into evidence? Or should they serve a function analogous to that of a pleading or affidavit? Several states have enacted specific provisions regarding the admissibility of reports. The Indiana and Louisiana statutes provide that reports may be admitted into evidence

"to the extent of [their] probative value." Alabama statutes provide that at the hearing on a motion to modify the dispositional order parties and their attorneys must be given the opportunity to examine and controvert written reports which are received by the court and used in making its determination. Parties must be afforded an opportunity to cross-examine the individual who made the report.

Cases in other contexts suggest that the due process guarantees of the United States Constitution probably require that all parties be given an opportunity to examine any report admitted into evidence, to cross-examine the maker of the report, and to call as witnesses those whom the maker of the report relied on for information. See Dodson, Advocating at Periodic Review Proceedings in Foster Children in the Courts 86, 100-101 (M. Hardin ed. 1983).

3.4.5 What is the degree of formality of the hearing? Is hearsay admissible? Do parties have the right to present and cross examine witnesses? May they subpoena witnesses? What rules of evidence apply?

A large proportion of the statutes which require some form of hearing simply are silent on procedural and evidentiary issues with no other statute clearly filling the gap. As a result, it is up to the presiding judge to decide on the formality of the procedure and to decide such questions as whether witnesses may be called and cross-examined. As was discussed in Chapter 2, some of these protections, particularly the right to present and cross-examine witnesses, are "essential elements" of due process which should be available at dispositional hearings both because of P.L. 96-272 requirements and the United States Constitution. It is also desirable for the statute

to specify the rules of evidence which apply, simply for the clarity of all the parties.

Some statutes are specific. Nineteen states have statutory provisions insuring parties the right to present witnesses; sixteen provide a right to cross-examine witnesses; twenty-nine provide a right to "be heard" or to "participate" in the hearing. (Some of the states are clear as to all three and are in all three categories.) The New Mexico statute specifically states that the rules of evidence will not apply to review hearings. All persons notified of the review hearing must be given an opportunity to present witnesses and cross-examine witnesses. Some states have general provisions that may apply to review proceedings; often this is not completely clear. North Dakota, for example, has a general provision which states that a party is entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross examine adverse witnesses. The review provision itself, however, simply says that an "opportunity to be heard" must be given to the parties affected in order for the court to extend a disposition order.

States may be specific in providing that certain evidentiary rules apply in all juvenile court proceedings. Some ten states have specific statutory provisions on this point. For example, Kansas law provides that the rules of evidence of the code of civil procedure apply in all proceedings under the juvenile code, with specific exceptions relating to the doctor/patient privilege and the admissibility of reports. The Oklahoma statute provides that all evidence that will be helpful in determining the proper disposition of the child is admissible at the dispositional hearing even if it would not be competent

evidence in the adjudicatory hearing. This includes oral and written reports.

3.4.6 Are the parties, particularly the parent and child, entitled to counsel at the proceeding? Must counsel be furnished at state expense if the parents are indigent?

The issue of entitlement to counsel, especially court-appointed counsel, has been highly contested in juvenile court proceedings in recent years. In Lassiter v. Department of Social Services, 452 U.S. 18 (1981), the U.S. Supreme Court held that counsel must be appointed for some but not all indigent parents in termination of parental rights cases. Generally, the dispositional hearing itself has less critical consequences for the parent than a termination case. As a result the claim to a right to counsel is correspondingly weaker at dispositional hearings than in termination cases.

The Supreme Court has not ruled on whether a child who is the subject of an abuse/neglect or termination of parental rights case is constitutionally entitled to counsel in these proceedings. However, Smith v. O.F.F.E.R., 431 U.S. 816 (1977) held that children need not be represented by separate counsel in proceedings concerning their removal from their foster home.

Nonetheless, despite the possible lack of a constitutional mandate for counsel at the dispositional hearing, it should be noted that virtually every organization which has issued recommendations on the subject of juvenile court proceedings recommends that children and indigent parents be provided with counsel at public

expense. The Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Commission, Standards Relating to Abuse and Neglect require appointment of counsel for the child and indigent parents and refers to continued representation by counsel at the time of review proceedings. The federal Child Abuse Prevention and Treatment Act, Public Law 93-247 (1974) requires that states appoint a guardian ad litem for children in all proceedings "arising from a report of neglect or abuse" as a condition of eligibility for federal program support.

Given this degree of attention over a period of several years to the question of counsel, it is not surprising to find that a large majority of states, some forty-five, have some statutory provision for appointment of counsel or a guardian ad litem, or both, for the child in abuse/neglect proceedings and a majority, some thirty-seven, also provide for appointment of counsel for indigent parents at some stages of the proceedings in at least some circumstances.

However, questions concerning precisely when counsel is required, and under what conditions and whether counsel is paid for at state expense, arise at the dispositional hearing. The statutes of many states do not make it clear whether counsel is expected to continue beyond the trial and disposition hearing in the original abuse/neglect case and whether counsel will be compensated for continuing. That is, the duration of the appointment of counsel is unclear.

The expert reviewers who reviewed the state statutory summaries made it quite apparent that the state of the law was very ambiguous in many states about whether

appointment of counsel was required for review proceedings or whether counsel appointed for the trial was required to continue to represent parent or child at review proceedings or whether the state had to pay counsel who chose to continue representation to that point. The argument can be made that counsel is appointed for the case and that the case continues until the court jurisdiction ends because the child is returned home and the case closed or placed for adoption or guardianship. While it is clear this argument is often made, our experts indicated that it is often rejected. Where a right to counsel is established by the statute it is most often in a general provision without a reference to the review or dispositional hearing phase of the case.

Counsel is an expensive commodity and courts tend to resist appointing counsel unless the law clearly requires it. For example, our site visits clearly revealed that even when the law appears to require appointment of counsel, counsel was sometimes not appointed for parents unless they, on their own, contested the agency's position and requested counsel. Similarly, in states in which appointment of counsel for the child is possible, this, in practice, is sometimes not done, if the parents and agency are "in agreement." This poses a serious problem for the child's well-being when parent and agency agree that the child should remain in foster care without termination of parental rights because then no one is available to advocate for a permanent plan for the child. In addition, at least one case was called to our attention in which a court held that the statute requiring counsel for the child was met by the representation of the District Attorney.

Many statutes providing for court-appointed counsel clearly do not require counsel in all cases. The Alabama statute provides that counsel should be appointed for the child in dependency cases "where there is an adverse interest between the parent and child" or where counsel is "otherwise required in the interest of justice." In Arkansas the court has authority to appoint defense counsel for parents "in appropriate cases." The Georgia statute provides that counsel must be provided for a child "not represented by his parent, guardian or custodian." Idaho law provides that the court may appoint independent counsel for a parent if the proceedings are complex, counsel is necessary to protect the parent's interests adequately and such interests are not represented adequately by another party.

The nature of the decision which must be made at a dispositional hearing is of sufficient complexity and importance to require assistance of counsel. If counsel is to be provided regularly, state statutes must specify that counsel be appointed at state expense for the child and indigent parents with representation to continue through the dispositional hearing and until a permanent placement for the child is finalized.

Several states do this now. For example, Kansas statutes require appointment of an attorney as guardian ad litem for the child and require appointment of an attorney for parents who want an attorney but are unable to employ one, except for competent parents who waive counsel or parents who refuse to attend hearings. Both the child's and parents' attorneys "shall continue to represent the client at all subsequent hearings in proceedings under this statute, including any appellate proceedings, unless

relieved by the court upon a showing of good cause or upon a transfer of venue." California law provides that the minor and parents are entitled to appointed counsel "at every stage of the proceedings when they desire but cannot afford counsel." However, the statute goes on to say that the child is entitled to separate counsel "when there is a conflict" between the interests of the child and parent. It is difficult to know when this is not so in abuse or neglect cases.

In New York the parent, foster parent or other custodian and the respondent in "any proceeding" have the right to appointed counsel if indigent. The North Carolina statute provides that a juvenile has the right to be represented by counsel in all proceedings and that all juveniles are conclusively presumed to be indigent. Colorado extends the right to counsel to parents of voluntarily placed children at the eighteen month review unless the court specifically finds that such appointment would serve no useful purpose.

3.4.7 Must a verbatim record be made of the proceedings?

Only 13 states have a statutory requirement that a verbatim record be made of review and dispositional hearing proceedings in at least some circumstances. In two additional states a record could be made "on request." Those that had a statutory provision at all tended to have a general provision in the juvenile code. California law, for example, provides that the official court reporter shall record testimony in court hearings conducted by a judge, and "as may be directed by the court" in all hearings before a referee.

Other information collected in the study confirmed that it was not an unusual practice for hearings before magistrates, referees, or Commissioners not to be recorded, while hearings before judges were. Michigan law specifically provides that stenographic notes or other transcripts of the hearing shall be taken only when requested by an attorney of record or when ordered by the court.

A record is important for preserving evidence for purposes of further proceedings, such as termination of parental rights proceedings, and for purposes of allowing an appeal from the decision of the court at the dispositional hearing. It also may serve, at a later time, to clarify what happened and what was discussed at the dispositional hearing proceeding. For example, parents may promise to take certain steps by a certain time in order to obtain return of the child or the agency may promise certain services. It may be helpful later to determine exactly what was said. We recognize that the issue of recording of proceedings is often covered by court rules rather than by statute and for that reason are unable to say with certainty the proportion of states that may have some requirement regarding recording of proceedings.

3.4.8 Must the court issue written findings and an order at the hearing?

Only eleven statutes require a written finding and order following a review or dispositional hearing. This could be a fairly serious problem if written orders are not issued, as uncertainty over exactly what the court ordered may hinder further progress on the case. Social workers assigned to a case may change and in the absence of a

written order will have no way of knowing precisely what the court has ordered. A different judge may hear the case the next time and not be able to determine accurately what happened at the prior hearing. It may be impossible to appeal an order if there is no written order from which to appeal.

A requirement of written findings tends to focus the court's attention on the decision to be made at the hearing. Requiring written findings why the child cannot be returned home or placed in a permanent home through adoption or guardianship when the court issues an order placing a child in long term foster care may compel the court to more carefully consider these other alternatives, which are generally preferable to long term foster care. The fact is that few statutes require written findings and orders.

Among the states that do now require specific written orders at their review or dispositional hearings are New York and Louisiana. The New York statute on review of children in voluntary placement provides that an order of disposition include the court's findings supporting its determination that such order is in accordance with the best interests of the child. The new Louisiana statute requires the court to "enter an order" with determinations on a number of specific points. When the court determines that a child should be placed with a relative or continued in agency custody, it must include written findings specifying why return home or termination of department custody or another permanent placement is not possible. If the current placement is not expected to be permanent, the court must specify a timetable for return home or another permanent placement. (The agency must then notify the court and the parties if the timetable is not met).

3.4.9 May the decision be appealed?

In only seventeen states, statutes indicated a right to appeal from a decision at a review or dispositional hearing. In some cases, the decision at the dispositional hearing is a final one and should always be appealable. For example, if the child's attorney believes return home would be dangerous, it should be possible to appeal a decision to return the child home. Similarly, if the child has been ordered into long-term foster care and both the child's attorney or guardian and the parents believe return home is preferable, appeal should be possible.

3.5 Coverage -- What children are covered by the relevant statute?

Failing to mandate dispositional hearings for all children in foster care is a major failing of many existing foster care review laws. In some states all children may not receive hearings because the statute requires hearings only on motion of a party or only in the court's discretion. And in some states statutes do not mandate review proceedings for certain categories of children. Most often excluded from statutory coverage are children voluntarily placed in foster care by their parents through agreement with the agency, children whose parents voluntarily relinquished all parental rights, and children whose parental rights have been terminated by the court.

3.5.1. Children who may be excluded because of lack of mandated hearing

In thirteen states, court review procedures are not mandated by statute at all (Wyoming) or are required by statute only at the court's discretion or on the motion of a party. These states are those listed in Table 3-12 under the heading "hearings on motion of a party" and "report only or report plus judicial discretion to schedule a hearing" as well as Wyoming with no procedure. In some areas the problem may be partially resolved by the agency seeking a hearing in all cases under court jurisdiction, as is reported to be the case in Massachusetts. Nonetheless, there is no statutory hearing requirement of coverage in these cases.

3.5.2. Voluntary Placements

Thirty-seven states are not required by statute to conduct dispositional hearings by a court or court-appointed or approved body for children voluntarily placed in foster care. Six of those states have statutory limits on time in voluntary foster care; however, other states have agency regulations limiting time in foster care. Eleven states have mandatory review procedures by a court or court-appointed or approved body covering voluntarily placed children and three states have discretionary procedures. Discretionary procedures are those in which hearings are available at the discretion of the court after the court receives a report or in which a party must file a motion requesting a hearing. Mandatory procedures are required for all children in the particular category. In some states high proportions of children in foster care are there on voluntary placements and for that reason the numbers involved are significant.

Table 3-3 Number of States With Review Procedures Covering Voluntarily and Involuntarily Placed Children

	Statutory Time Limits	Mandatory Procedure	Discretionary Procedures	No Procedure
Voluntary Placements	6	11	3	37
Involuntary Placements	-	38	12	1

The large majority of states simply do not have a statutory mechanism for establishing court jurisdiction over children voluntarily placed in foster care by their parents. While many agencies have dealt with the P.L. 96-272 mandate for six month reviews for voluntarily placed children by establishing internal agency review procedures by agency regulation, agency action cannot confer on the courts authority to conduct dispositional hearings for such children. In many states the courts have no statutory jurisdiction over such cases. And lacking jurisdiction courts cannot "approve" or "appoint" bodies to review the cases. Further, it is difficult to see what supervisory power the court might maintain with respect to individual children in the absence of juvenile court jurisdiction.

Under the most typical statutory schemes, the court obtains jurisdiction through the initiation of formal proceedings for abuse, neglect or dependency and maintains jurisdiction as long as the child is under the supervision of the agency. Various review proceedings after

adjudication are timed from the initial disposition proceeding in that case, or from the time the placement order was issued. Children who are not in care pursuant to such orders simply are not covered. Yet P.L. 96-272 does require dispositional hearings within eighteen months for all children in public agency supervised foster care.

Another statutory option to meet the eighteen month dispositional hearing requirement is to simply limit the amount of time an agency may maintain a child in foster care pursuant to a voluntary placement without initiating a court proceeding of some kind. The survey identified six states with such statutory time limits. For example, Alaska and California statutes limit time in voluntary foster care to six months. Vermont sets a time limit of one year.

Eleven states have established other statutory mechanisms for insuring court review of all children voluntarily placed in care. In New Jersey, statutes require that the agency file notice of voluntary placements with the court within seventy-two hours; this establishes continuing court jurisdiction over the child's placement. Thereafter the child is entitled to the same periodic reviews by a citizen review board and the court as are children placed in care by the court. (However, many of these are only required by statute to be paper reviews.) In Missouri, when a voluntarily placed child has been in care for six months the agency is required by statute to petition the juvenile court to review the child's status; the court must review the case but <u>may</u> or may not conduct a dispositional hearing at that time. In Florida the court must review the cases of voluntarily placed children at six months and annually thereafter. In Colorado, if the child remains in voluntary foster care in excess of ninety days statutes require that a

hearing must be held to determine whether continued placement is in the best interest of the child and the community. Parents are entitled to notice. Periodic reviews follow.

Although these statutes clearly demonstrate that it is possible to establish appropriate statutory mechanisms for bringing voluntarily placed children under the court's jurisdiction, few states have taken steps to do so.

3.5.3. Children voluntarily relinquished by parents or whose parental rights have been terminated.

Children whose parental rights have been terminated also need reviews and further dispositional hearings to insure that a permanent plan - such as adoption, long-term foster care, or guardianship is actually arranged for the child. But as with children who are voluntarily placed in foster care by their parents, children whose parents voluntarily relinquish all parental rights are generally not covered by review and dispositional hearing statutes because no court ever established jurisdiction over the case. Children whose parental rights have been terminated may also have difficulty obtaining dispositional hearings. In a number of states, involuntary termination of parental rights cases are heard in a different court from the one which hears the initial abuse/neglect case. The juvenile court may cease exercising jurisdiction when the termination of parental rights case is filed in the other court and no statute may require continued review or dispositional hearings after that time.

The Texas statute clearly provides for periodic reviews of children whose parental rights have been terminated or whose parents have voluntarily relinquished all parental rights by authorizing the court to order the agency to find an adoptive home. The Washington State statute requires the court to review the status of children whose parents' rights have been terminated every six months until an adoption decree is entered. Other states which specifically cover such children include the District of Columbia, Georgia, Kansas, Minnesota, and Virginia.

3.6 Timing - Who schedules these proceedings and what time frame is specified by statute?

3.6.1 Time Frame

The statutory time frame for holding the legal proceeding closest to a dispositional hearing varied enormously, as shown in Tables 3-4 and 3-5. Where state statutes provided for some form of periodic review or dispositional hearing by a court or court-appointed or approved body for children who remain in foster care, the time frames varied considerably. Most of the times specified for periodic review proceedings which most closely approximated dispositional hearings under Public Law 96-272 ranged from six months to two years. A number of these proceedings are the same as would be used to satisfy the P.L. 96-272 six-month review requirement.

A number of states have changed their statutes to provide for a review period of eighteen months or less. However, even those with new statutes may not clearly require scheduling of the dispositional hearing within eighteen months. For example, Nevada has passed a statute

which requires that the dispositional hearing be held within eighteen months after the initial semi-annual hearing and at least annually thereafter. Thus the initial dispositional hearing can be held more than eighteen months after the child enters care. Of particular concern are those states that provide no specific time frame for hearings but, instead, provide for hearings on motion of a party. These nine statutes obviously provide no assurance of timely dispositional hearings. Nor does Wyoming, which has no statute providing for a review.

Table 3-4 Time Within Which a State's Proceeding Most Closely Approximating P.L. 96-272 Dispositional Hearing Requirement Must Take Place

	Time until first proceeding				
	6 mo.	1 year	18 mo.	2 yrs.	On motion
Hearing	10	14	19	5	9
Paper review	4	2	1		

Several states appear in more than one category because review proceedings for different classes or ages of children are scheduled at different times.

One difficulty with many statutes is that the time for reviews and dispositional hearings is calculated, under statutory requirements, not from the time the child entered foster care, but, rather from the date the court entered an order of disposition in the abuse or neglect case. This is the

case in twenty-five states. Many states have no time limits for bringing such a case to trial and in many areas children may remain in foster care for six months or more while awaiting trial. Thus, a statute which requires a dispositional hearing eighteen months after the date of the order of initial disposition does not guarantee the child a dispositional hearing within eighteen months of entering foster care. Some twenty-one states have statutes which could be construed as requiring some action based on the date of entry into foster care. Even these can be problematic because courts sometimes construe "date of placement" to mean date of placement order by the court at initial disposition. The Virginia statute provides a good example. The Virginia statute requires a petition for a hearing "within sixteen months of initial foster care placement" and requires the court to set the hearing within sixty days of the filing of the petition. New York statutes require that when a voluntarily placed child has "been in foster care" for eighteen months the responsible agency must file a petition for review.

P.L. 96-272 requires that further dispositional hearings be held "periodically" after 18 months but allows the state to define the time frame for these subsequent dispositional hearings. Table 3-5 shows the times established by statutes. In states with statutes that simply mandate periodic reviews or mandate hearings on expiration of the dispositional order, hearings continue to be held at regular intervals, although none of them may result in a definitive decision on the child's future. Most of the states which have passed legislation requiring a decision on the child's future status at a specific point in time also provide for subsequent dispositional hearings. Florida, Indiana, Iowa, Michigan, Vermont, Nevada and Oklahoma, for example, all have such provisions.

Table 3-5 Time Within Which a State's Proceeding Most Closely Approximating Subsequent Dispositional Hearings Must Take Place

	6 mo.	1 year	18 mo.	2 yrs.	3 yrs.
Hearing	11	10	9	1	1
Paper review	1	1			

3.6.2 Scheduling

State statutory schemes are split on whether the court or review board is required to hold a hearing at a specific point in time or whether the agency is required to petition for an extension of the order or petition for a review. Statutes which provide for orders to expire unless the agency files a petition for an extension may provide an incentive for action by the agency. For example, it may simply be easier to return a child home at the time a petition would be required rather than seeking extension. Other aspects of this study, particularly site visits, indicated that scheduling of reviews by the agency was sometimes unreliable, particularly when the individual worker was relied on to schedule the hearing. Particular difficulty may be expected when no statutory time frame is provided for agency petitions, but, rather, the agency is attempting to meet P.L. 96-272 requirements by filing a motion to modify or motion for a review in a timely fashion.

If a petition is required by statute to be filed when the child has been in foster care for eighteen months, it is almost assured that the hearing itself will not be held within

eighteen months of the child's entering foster care because of the necessity of notifying all parties and awaiting scheduling on the court docket.

3.7 Court-appointed or approved bodies - What is the authority of court-appointed or approved bodies?

Nine states reported during telephone interviews that they used court appointed or approved bodies to hold the dispositional hearings required by P. L. 96-272. They were Mississippi, Montana, Oregon, Kansas, Kentucky, New Jersey, Idaho, Tennessee and Wyoming. Since the time of the telephone interviews, Tennessee has passed new legislation which requires a judicial hearing within eighteen months of placement. Presumably, this judicial hearing will be used for purposes of meeting the dispositional hearing requirement. Therefore, Tennessee is not included in the following discussion. Five states, Mississippi, Oregon, Kansas, Idaho and Wyoming, had no statutory provision at all establishing these administrative proceedings. Of those five states, four had statutory provisions establishing some form of periodic report to the court or court review, while Wyoming has no statutory provision covering foster care review or dispositional hearings at all. The five states are included in other categories than "periodic review by review boards or other court-appointed or approved bodies" in Section 3.1 and Table 3-1, above, because those categories are based on the statutory provision which most closely resembles the P.L. 96-272 dispositional hearing requirement and there is no statutory provision establishing the use of court-appointed or approved bodies in these states. Mississippi statutes require periodic reports to the court as well as annual court "review" of custody orders. Oregon statutes require an annual report to the court. Neither of these states requires a hearing. Kansas statutes require

reports to the court each six months and provide the court may hold a hearing if not satisfied with progress in the case. Idaho statutes require an annual court hearing if the custody order is to be extended. It is unclear in these states how the court appointed or approved bodies were established, what their procedures are, the nature of the decisions required and their relationship to the court.

Kentucky, New Jersey, and Montana all establish a review board or review committee procedure by statute. In Kentucky, review boards are discretionary under the statute. In New Jersey and Montana they are required by statute. In all three states the board or committee must be appointed by the court. In Montana, the committees are appointed by the court in consultation with the agency and must include an agency representative. In Montana, the state child welfare agency is authorized and required by statute to issue regulations governing review board operations. In New Jersey, a separate state level review board is set up by statute to oversee review board operations statewide. Because New Jersey has a court "review" with optional hearing for all cases mandated by statute it was placed in the category of "report only or report plus judicial discretion" to order a hearing in Section 3.1 and Table 3-1, above.

None of these statutes specify the kind of procedural safeguards one would expect or hope for in a court proceeding. In Montana, agency regulations governing review committee proceedings provide that members of the committee, the worker, supervisor, foster parent, parent, child, guardian ad litem and others as appropriate all may attend the review committee meeting. In New Jersey notice of the proceedings must be provided to the agency, child, parent or guardian and any person with an interest or information about the child's

welfare. However, the statute also provides that the board will conduct the review and make recommendations based on written materials, although the board may allow witnesses. In Kentucky, there is no statutory requirement that parents be notified of the review until it is completed, at which time the agency, the parent's attorney and the child's guardian ad litem all must be notified that the board's review of the plan and progress report have become part of the court record. None of these three statutes provide for subpoenaing witnesses, or other attributes of what might be called "hearings". Neither do their rules provide that attorneys for the parties may hear the proceedings in full.

In each of these three states the board or committee must report to the court its findings or recommendations. In each, the board or committee is required to focus on the appropriateness of the plan for the child and on whether it is progressing, but only in New Jersey, of these three states, is the board required to recommend a specific plan, including termination of parental rights if they find that course advisable. In none of these states is the board's or committee's recommendation binding. Each must file a written report with the court. However, in Kentucky and Montana, the court is not required to take any action with respect to the report or to review it in any way. In New Jersey, the court must issue an order following receipt of the report but is not required to hold a hearing before doing so. (It may hold a hearing, just as the review board may hear witnesses).

In none of these three states is there a requirement of a decision on the child's future status at a specific point in time. In New Jersey the board and court must both consider whether to recommend termination of parental rights but there is no particular limit on time in foster care.

In short, statutes in these three states are positive in focusing attention on the permanency plan for the child but are insufficient to ensure time limited decision-making. Similarly they are weak in due process safeguards and in providing authority to cause the plan selected to be carried out.

APPENDIX A

Summary of State Statutory Provisions Closest to P.L. 96-272 Dispositional Hearing Requirements

Note on Preparation of Statutory Summaries

The legal research on these statutory provisions was originally done in February 1983 and generally covered statutory provisions enacted by the end of 1982. In January and February of 1984, summaries of these statutory provisions were sent to expert reviewers for each state. These reviewers are listed in the Acknowledgements section. Their corrections and revisions are included in these summaries. In several states new legislation had been passed during 1983. These summaries reflect the new legislation even though in some cases it will not go into effect for several months. In some cases, the reviewers indicated that legislation was pending in their state legislatures and that passage is expected this year. This proposed legislation, which had not passed by early 1984, is not included.

In addition, a few reviewers sent copies of juvenile court rules which covered points included in the statutory summaries. Reference to these rules is included in the summaries although court rules were not researched for all states in a systematic fashion.

Please note that the term guardian ad litem and the abbreviation GAL are used interchangeably throughout these summaries.

Procedure

Upon motion of child, custodial agency or individual with custody, the court may hold a hearing on the order and may modify, revoke, or extend initial disposition order. Ala. Code §12-15-74 (1977).

Coverage

Involuntary placement cases. Ala. Code §12-15-1 (10), - 74 (1977).

Procedural Safeguards

The court may dismiss the motion to modify, revoke or extend if after a preliminary investigation, it finds that it is without substance. Ala. Code §12-15-74(b)(1977).

The court may hold a hearing upon the motion if it determines the order should be reviewed. Ala. Code §12-15-74(b)(1977).

Opportunity to Present Witnesses - Parties and their counsel shall be afforded the opportunity to examine and controvert written reports, which are received by the court and used in making its determination. Parties are also afforded opportunity to cross-examine individuals who make the reports. Ala. Code §12-15-65(f)(1977).

In hearing on initial disposition and in subsequent hearing on motion to modify, extend or terminate, the court may receive into evidence all relevant and material evidence even if not admissable in hearings on the petition. Ala. Code §12-15-65(f)(1977).

The court shall appoint counsel for a child in dependency cases where there is an adverse interest between the parent and child or when the parent is a minor or counsel is otherwise required in the interests of justice. Ala. Code §12-15-63 (1977).

In dependency cases, the parents, guardian or custodian shall be informed of their right to counsel and upon request, counsel will be appointed if parties are financially unable to obtain one. Ala. Code §12-15-63(b) (1977).

The court, at any stage of the proceeding, may appoint GAL for a child if he has no parent or guardian appearing on his behalf or their interests conflict. Ala. Code §12-15-18 (1977).

The court must hear a case when the parties object to a hearing by a referee. A judge may order a rehearing before the court if a party files a written request within 14 days of receiving the referee's findings and recommendations. Ala. Code §12-15-6(b)(c)(d) (1977).

Scheduling

Upon motion of child, custodial agency or individual with custody, court may modify, revoke, or extend initial disposition order. Ala. Code §12-15-74(a) (1977).

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Authority of Court

After a hearing on the motion to modify, the court may terminate the order if it finds the child is no longer in need of care, supervision or rehabilitation or it may enter an order extending or modifying the original order if it finds such action necessary to safeguard the child or the public interest. Ala. Code §12-15-74(b) (1977).

Decision Required

After a hearing on the motion to modify, the court may terminate the order if it finds the child is no longer in need of care or it may extend or modify the original order if it finds such action is necessary to safeguard the child or the public trust. Ala. Code §12-15-74 (1977).

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ALASKA

REVIEW PROCEDURE

Procedure

The court shall review a commitment order annually and may review it more frequently to determine if order remains in the interest of the minor and public. The department, minor, minor's parents, guardian or custodian are entitled to a review on application when good cause is shown. Alaska Stat. §47.10.080(f) (Supp. 1979).

When the court has terminated parental rights, the department or guardian shall report annually to the court on efforts made to find a permanent placement for the child. Alaska Stat. §47.10.080(c)(3) (Supp. 1979).

Coverage

Children covered by a placement order. Alaska Stat. §47.10.080(f) (Supp. 1979).

Time in voluntary placement limited to six months. Alaska Stat. §47.10.230(c) (Supp. 1979).

Procedural Safeguards

Notice - If a party's application for review is granted, the court shall afford reasonable notice in advance of the review to the department, minor, minor's parents, guardian or custodian and their representatives. Alaska Stat. §47.10.080(f)(1) (Supp. 1979).

Opportunity to be Heard - Upon grant of a party's application for review, the court shall hold a hearing. At the hearing, the interested parties (the department, the minor, the minor's parents, guardian, or custodian and their representatives) shall be afforded an opportunity to be heard. Alaska Stat. §47.10.080(f)(1) (Supp. 1979).

The minor shall be afforded an opportunity to be present at the review. Alaska Stat. §§47.10.080(f)(1) (Supp. 1979).

Right of Appeal - A minor, the minor's parents or guardian acting on minor's behalf, or the department may appeal a judgment or order issued by the court under this chapter. Alaska Stat. §47.10.080(i) (Supp. 1979).

Scheduling

Court shall review placement order annually and may review more frequently to determine if order remains in interests of minor and public. Alaska Stat. §47.10.080(f) (Supp. 1979).

Court shall review placement upon application by department, minor, minor's parent, guardian, or custodian upon a showing of good cause. Alaska Stat. §47.10.080(f)(1) (Supp. 1979).

When the court has terminated parental rights, the department or guardian shall report annually to the court on efforts made to find a permanent placement for the child. Alaska Stat. 47.10.080(c)(3) (Supp. 1979).

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Decision Required

Court must review placement order annually or more frequently to determine if continued placement or supervision, as it is being provided, is in the best interests of the minor and the public. At the review hearing, the child must be returned home unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated continues to exist. Alaska Stat. §§47.10.080(f), 47.10.083 (Supp. 1979).

If a child is not returned home, the court shall establish on the record: (1) why the child was removed from home; (2) what services have been provided to facilitate reunion; (3) what services were utilized by the parents to facilitate reunion; (4) the visitation history; (5) whether additional services are needed to facilitate the return of the child to his parents (6) when return of the child can be expected. Alaska Stat. §47.10.083 (Supp. 1979).

HEARING ON EXPIRATION OF FOSTER CARE ORDER

Procedure

Initial order of commitment may not extend beyond 2 years or age 19; department may petition for and court may grant an extension of up to two years after a hearing. Alaska Stat. §47.10.080(c) (Supp. 1979).

Procedural Safeguards

Hearing required to extend commitment. Alaska Stat. §47.10.080(c) (Supp. 1979).

Scheduling

Order expires after 2 years if not extended on petition. Alaska Stat. §47.10.080(c) (Supp. 1979).

Authority of Court

Court may extend the order if it is in the child's and public's best interest or not do so if it is not (in which case order expires). Alaska Stat. §47.10.080(c) (Supp. 1979).

Decision Required

Commitment may be extended 2 years or up to age 19 (or 1 year beyond age 19 with person's consent) if the extension is in the best interest of the child and public. Alaska Stat. §47.10.080(c) (Supp. 1979).

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Procedure

Court review after child in foster care for period of one year; court may reaffirm or direct other disposition. Subsequent yearly reviews made when child remains in foster care. Ariz. Rev. Stat. Ann. §8-515.C-H (Supp. 1982).

The agency/division must conduct a complete review of placement and progress every six months. Ariz. Rev. Stat. Ann. §8-516(E) (Supp. 1982).

Coverage

Statute covers cases on which parental rights have been terminated, cases in which proceedings to terminate parental rights are underway and permanent/long term care. Ariz. Rev. Stat. Ann. §8-515.C-H (Supp. 1982).

Procedural Safeguards

Notice - Notice of court review and the right of participation ... shall be provided by juvenile court by certified mail unless the court determines that another notification process is more appropriate. Parties to be notified include: the agency; foster parents in whose home the child resided within the last six months or resides at present; the child's parents or guardian, unless rights have been terminated, relinquished, or parental consent to adoption has been given; the foster child, if age twelve or older; such other persons as the court may direct. The court may dispense with the child's attendance. Ariz. Rev. Stat. Ann. §8-515(D) (Supp. 1982).

Reports - A copy of the Foster Care Review Board's findings and recommendations shall be sent to the Division or agency with court ordered custody and to such other interested parties as the court may require. Ariz. Rev. Stat. Ann. §8-515.03(2) (Supp. 1982).

The division/agency shall submit to the court a progress report resulting from its six month review including an assessment of the extent to which the agency is accomplishing the purpose of foster care as described in the plan; the appropriateness of the plan, the length of time in foster care and the number and length of placement. Ariz. Rev. Stat. Ann. §8-516(E) (Supp. 1982).

Counsel - Child has right to be represented by counsel in all proceedings under this title and the rules of procedure for the Juvenile Court. Counsel will be provided for an indigent parent and child unless waived. Counsel will be provided for the child when the court appearance may result in institutionalization of the child unless waived. Court may appoint separate counsel for the child when a conflict of interest exists between the parent and child. (Counsel is appointed in addition to the one appointed for, or employed by, the parents). Ariz. Rev. Stat. Ann. §8-225.A-E (Supp. 1982).

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Scheduling

Court shall conduct review after child has been in foster care for a period of one year. Subsequent yearly reviews required when child remains in foster care. Ariz. Rev. Stat. Ann. §8-515.C-H (Supp. 1982).

Authority of Court or Review Body

At review court must determine its order of disposition. It may reaffirm the dispositional order or direct another disposition of the child. The dispositional alternatives include placing the child with his or her parents under agency supervision; placing the child with an institution, association, individual, school, child care agency or relative; placing the child under protective supervision of the probation department; or placing the child under the supervision of the independent living program. Ariz. Rev. Stat. Ann. §§8-515(C), (G), 8-241 (Supp. 1982).

Decision Required

The court may reaffirm the dispositional order or direct other disposition of the child. Ariz. Rev. Stat. Ann. §8-515(c) (Supp. 1982).

In reviewing the foster care placement and appropriateness of the foster care plan, the court shall consider the goals of the foster care placement and appropriateness of the plan; services offered to reunite the family; and when return home is not likely, the efforts which have been made or should be made to evaluate or plan for other modes of care. Ariz. Rev. Stat. Ann. §8-515(G) (Supp. 1982).

In reviewing the foster care status of the child, the court shall, in so far as possible, seek first to reunite the family, second to arrange permanent placement for the child through adoption or long term foster care or other care as appropriate to the child's best interests. Ariz. Rev. Stat. Ann. §8-515(H) (Supp. 1982).

Procedure

After a finding that a juvenile is abused or neglected the court shall hold a hearing or review the case every six months sufficiently to enter findings of fact to determine whether the order should be continued, modified, or terminated. Ark. Stat. Ann. §45-436(5) (Supp. 1981).

Coverage

Statute covers dependent and neglected juveniles. (No statutory provision regarding voluntary placements (limited to 30 days by policy); excludes children whose parental rights have been or are being terminated because jurisdiction is then in Probate Court.) Ark. Stat. Ann. §45-403(4) (1977).

Procedural Safeguards

The court shall hold a hearing or review the case sufficiently to enter findings of fact. Ark. Stat. Ann. §45-436(5) (Supp. 1981).

Notice - Is same as in chancery proceedings. Ark. Stat. Ann. §42-425 (1977).

Counsel - Court has authority to appoint defense counsel in appropriate cases. Ark. Stat. Ann. §42-413 (1977).

Guardian Ad Litem - Court to appoint guardian ad litem for cases based on abuse or neglect. The guardian shall have access to all reports relevant to the case and any reports of examination of the parent. Guardian shall make further investigations, interview witnesses, examine and cross-examine in both the adjudication and post-adjudication disposition hearings, make recommendations in the courts, and participate further in the proceedings to the degree appropriate for adequately representing the child. Ark. Stat. Ann. §42-817(a) (1977).

Appeal - Appeal is conducted by trial de novo in circuit court. Ark. Stat. Ann. §45-440 (1977).

Scheduling

Court shall hold hearings or review case every six months to determine whether order should be continued, modified or terminated. Ark. Stat. Ann. §45-436(a) (Supp. 1981).

Authority of Court

Upon hearing or reviewing case, court must determine whether order should be continued, modified, or terminated. Court must also determine whether the placement is appropriate and is in best interests of the juvenile. Ark. Stat. Ann. §45-436 (5) (Supp. 1981).

Decision Required

Upon hearing or reviewing the case, court must determine whether order should be continued, modified, or terminated. Court must also determine whether the placement is appropriate and is in best interests of the juvenile. Ark. Stat. Ann. §45-436(5) (Supp. 1981).

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Procedure

If the child cannot be returned home because it would create a substantial risk of detriment to the child's physical or emotional well being, the court shall conduct a permanency planning hearing to make a determination regarding the child's future status no later than 12 months after placement and periodically thereafter, but not less than every 18 months during continuance of foster care. The hearing may be combined with the 6 month review. Cal. Welf. & Inst. Code §366.25 (a) (1982).

Coverage

Every dependent child in foster care. (This includes children originally placed voluntarily. Voluntary placements may only continue for 6 months unless child is free for adoption.) Cal. Welf. & Inst. Code §366 (a); §16507.6 (1982).

Procedural Safeguards

Warning - At the initial disposition, the court shall inform parents of termination statutory provisions and specify that their parental rights may be permanently terminated if custody is not resumed within 12 months. Cal. Welf. & Inst. Code §361 (1982) (initial disposition).

Notice - Notice of the hearing shall be mailed by the probation officer to the persons notified in the original proceedings, the present custodian and to counsel of record by certified mail addressed to the last known address or personally served 15 to 30 days prior to the review date. Persons notified in the original proceedings include the minor, if 14 or older; the parents or guardian; or, if there is no parent or guardian residing in the state, any adult relative living in the county or if there is none, the adult relative living nearest to the court. The notice must include a statement that the minor and parent or guardian have a right to be present at the hearing to present evidence and to be represented by counsel. The notice must also describe applicable procedures to obtain appointed counsel. Cal. Welf. & Inst. Code §366.25 (b), 332 (e), 335 (1982); Cal. Juv. Ct. Rules, Rule 1378 (b); 1379.

Report - Prior to the hearing the probation officer or social worker shall prepare a social study of the minor, which shall contain those matters relevant to a proper disposition of the case and a recommendation for the disposition of the case. Cal. Juv. Ct. Rules, Rules 1376 (b), 1378 (e). A report is required for the six month review which may be combined with the permanency planning hearing. It must cover services offered to the family, progress made, the prognosis for return of the minor to the physical custody of the parent or guardian and must make a recommendation for disposition. This report must be provided to the parents 14 days before the hearing. The community care facility or home-finding agency shall also file a report with the court and the foster parents may do so. The court shall consider any such report and recommendation prior to determining any disposition. The court may also require additional reports. Cal. Welf. & Inst. Code §366.2, 365 (1982).

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Minor's Right to be Present - A minor who is the subject of a juvenile court proceeding is entitled to be present at the hearing. Cal. Welf. & Inst. Code §349 (1982).

The official court reporter shall record testimony and statements in court hearings conducted by a judge, and may record testimony and statements as directed by the court in all hearings before a referee. Cal. Welf. & Inst. Code §347 (1982) (general provision).

Conduct of Hearing - Except when there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtain maximum cooperation of all involved. Cal. Welf. & Inst. Code §350 (1982).

Counsel - Minor and parents are entitled to appointed counsel at every stage of the proceedings when they desire but cannot afford counsel. The child is entitled to separate counsel when there is a conflict between the interests of the child and parent. Cal. Welf. & Inst. Code §316.317 (1982) (general provision).

GAL - In abuse and neglect cases, the probation officer or social worker filing the petition shall be the Guardian Ad Litem unless the court appoints another adult. Cal. Welf. & Inst. Code §326 (1983) (general provision).

Appeal - Orders are appealable. Cal. Welf. & Inst. Code §395 (1982).

Scheduling

If the child cannot be returned home because it would create a substantial risk of detriment to the child's physical or emotional well being, the court shall conduct a permanency hearing to make a determination regarding the child's future status no later than 12 months after placement and periodically but not less than every 18 months during continuance of foster care. The hearing may be combined with the 6 month review. Cal. Welf. & Inst. Code §366.25 (a) (1982).

Authority of Court

Court must return child home if statutory standard is met. If not returned home and there is a substantial probability that custody could be returned to parents in 6 months, court must set a further hearing. If return home does not appear probable, court must select termination of parental rights, guardianship or long-term foster care under statutory guidelines and order agency to carry out plan. (See further discussion under "Decision Required".) Cal. Welf. & Inst. Code §366.25 (1982).

In addition, court may make any reasonable order for the care, supervision, custody, conduct, maintenance and support of the minor subject to further court order. Cal. Juv. Ct. Rules §1377 (e), 1378 (e).

Decision Required

At the permanency hearing, the court shall first determine if the child should be returned home. Cal. Welf. & Inst. Code §366.25 (c) (1982).

The court shall order return home unless the probation officer proves return would create a substantial risk of detriment to the child's physical and emotional well-being. Failure of a parent or guardian to participate in court-ordered treatment shall be prima facie evidence that return would be detrimental. The court shall review the probation officer's report and consider the parent's progress and/or efforts, the extent to which the parent cooperated and availed himself/herself of services provided. Cal. Welf. & Inst. Code §366.2 (d) (1982).

If the court determines that the child cannot be returned to the parent's physical custody, and there is not a substantial probability that return will be within 6 months, the court shall make a permanent plan for the child and shall make the following determinations and orders: If the child is adoptable, the court shall order the county counsel or district attorney to initiate an action to permanently free the child from the parents' custody and control unless the court finds that the parents have maintained regular visitation and the child would benefit from continuing the relationship; a child 12 years or older objects to the termination of parental rights; the child's foster parents are unable to adopt because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing a stable and permanent environment for the child and removal from their custody would be seriously detrimental to the child's well-being. If the court finds that the child is not adoptable or should not be adopted, but that an adult is available and eligible to be a legal guardian for the child, the court shall order the department to initiate or facilitate guardianship unless the minor's foster parents are unable to be legal guardians due to exceptional circumstances and removal would be seriously detrimental to the child's emotional well-being. If the court finds the minor to be unadoptable and there is no suitable guardian available then the court shall order the county welfare or probation department to facilitate the child's placement in a home environment that can be reasonably expected to be stable and permanent. The child shall not be removed from willing and able foster parents if removal would be seriously detrimental to the child's emotional well-being due to substantial psychological ties. Cal. Welf. & Inst. Code §366.25 (d) (1982).

Periodic court reviews subsequent to the permanency planning hearing shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan and the case plan and the adequacy of services provided the child. Cal. Welf. & Inst. Code §266.25 (g) (1982).

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Procedure

The court will review any decree giving custody of a child to an individual, institution or agency 3 months after it is entered and each six months after this initial review. The decree itself must be for determinate period and may be renewed for an additional determinate period after notice and hearing. Colo. Rev. Stat. §19-3-115 (4) (Supp. 1983).

Coverage

Voluntary placement. Colo. Rev. Stat. §19-3-101.1 (Supp. 1983).

Court ordered placement. Colo. Rev. Stat. §19-3-109 (Supp. 1983).

Procedural Safeguards

Notice - In determining whether to renew the placement decree, the court must give notice prior to hearing. (§19-3-115 (4) (c) has also been interpreted as requiring a hearing at 6 month reviews.) Colo. Rev. Stat. §19-3-115 (4) (b) (Supp. 1983).

Evidence - For the purposes of determining proper disposition for a child, written reports and other material relating to the child's mental, physical and social history may be received and considered by the court subject to cross-examination by the child, parent/legal guardian or other interested party. Colo. Rev. Stat. §19-1-108 (2) (1978).

Report - Unless waived by the court, the Probation Department or other designated agency shall make a written social study and report in all children's cases. In any case where placement out of the home is recommended the social study shall include an evaluation for placement. Colo. Rev. Stat. §19-1-108 (1), (2.5) (1978).

Open Hearings - Hearings shall be public unless the court determines it to be in the best interest of the child to exclude the public. Colo. Rev. Stat. §19-1-108 (2) (1978) (general provision).

Rules of Procedure - The Colorado rules of juvenile procedure apply to all proceedings under the neglect and dependency jurisdiction of the court. Colo. Rev. Stat. §19-1-107 (1978).

Findings - The findings of the court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree. Colo. Rev. Stat. §19-3-115 (b) (Supp. 1983).

Record - A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. Colo. Rev. Stat. §19-1-107 (3) (1978).

GAL-Voluntary Placement - Court shall appoint a GAL to protect the interests of a child who is subject of a review to determine whether continued voluntary placement is necessary unless the court makes specific findings that such appointment would serve no useful purpose. Colo. Rev. Stat. §19-3-101.1 (4) (Supp. 1983).

GAL - The court may appoint a guardian ad litem to protect the interest of a child in proceedings when no parent, guardian, legal custodian or relative of the child appears at the first or any subsequent hearing in the cases; or the court finds that there may be a conflict of interest between the child and child's parent, guardian,

or other legal custodian; or the court finds it in the child's interest and necessary for child's welfare, whether or not a parent, guardian, or other legal custodian is present. In all proceedings brought for the protection of a child suffering from abuse, a guardian ad litem shall be appointed for the child. The appointment of a GAL shall continue until court jurisdiction is terminated. Colo. Rev. Stat. §19-3-105 (1) - (4) (1978) (general provision).

Counsel - At his first appearance before the court, the child and child's parents, guardian, or other legal custodian shall be fully advised by the court of their right to be represented by counsel at every stage of the proceedings. If the child or child's parents, guardian or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court when termination of parental rights is a possible remedy. Colo. Rev. Stat. §19-1-106 (1) (d) (1978).

The court may appoint counsel without request if it deems representation by counsel necessary to protect the interest of the child or other parties. The appointment of counsel shall continue until such time as the court's jurisdiction is terminated, or until such time as the court finds that the child, child's parents, guardian, or other legal custodian has sufficient financial means to retain counsel or that the child's parents, guardian, or other legal custodian no longer refuses to retain counsel for the child. Colo. Rev. Stat. §19-1-106 (1) (e), (f) (Supp. 1983) (general provision).

Appeal - An appeal may be taken from any order, decree, or judgment. Colo. Rev. Stat. §19-1-112 (1) (1978) (general provision).

Commissioner - The Juvenile Court may appoint a commissioner to hear the cases; parties have a right to a hearing before a juvenile judge in the first instance but if they waive that right, they are bound by the findings and recommendation of the commissioner. Parties may request within 5 days a review of the commissioner's findings and recommendations by the Juvenile Judge upon grounds in Rule 59 of the Colorado Rules of Civil Procedure. Colo. Rev. Stat. §19-1-110 (1978).

Scheduling

Placement decree shall be reviewed by court no later than 3 months after it is entered. Colo. Rev. Stat. §19-3-115 (4) (a) (Supp. 1983).

The court shall review a placement decree every 6 months after the initial review until termination of the determinate period. Colo. Rev. Stat. §19-3-115(4) (c) (Supp. 1983).

Authority of Court

No specific grant of authority with respect to 6 month court reviews.

Court may after hearing on petition for renewal, renew the decree for additional determinate period. Colo. Rev. Stat. §19-3-115 (4) (b) (Supp. 1983).

Decision Required

(No specific decision is required on 6 month review.)

The court may renew the decree for such additional determinate period as the court determines if it finds such renewal to be in the best interest of the child and of community. Colo. Rev. Stat. §19-3-115 (4) (b) (Supp. 1983).

Procedure

Ninety days before expiration of each committment the Commissioner of Children and Youth Services shall petition the court to revoke or extend commitment or terminate parental rights. Court may, upon finding extension in best interest of child, extend commitment for an 18-month period. Conn. Gen. Stat. Ann. §46b-129(e) (West Supp. 1983-1984).

Coverage

Involuntary placement cases. Conn. Gen. Stat. §46b-121 (West Supp. 1983-1984).

Procedural Safeguards

Notice - Court shall give notice to the parent(s) or guardian and to the child at least fourteen days prior to the hearing on commissioner's petition to revoke or extend commitment or terminate parental rights. Conn. Gen. Stat. Ann. §46b-129 (e), (i) (West Supp. 1983-1984).

Hearing - A hearing is required. [Foster Parent] shall have standing for the purposes of this section in matter concerning the placement or revocation of commitment of a foster child living with such parent. A foster parent shall receive notice of any application to revoke commitment or any hearing on such application. Conn. Gen. Stat. Ann. §46b-129 (i) (West Supp. 1983-1984).

Reports - All records of cases of juvenile matters, including studies and reports of probation officers, social agencies and clinics, shall be "available" to the attorney representing the child, parent or guardian and the adopted person. Conn. Gen. Stat. §46b-124 (West Supp. 1983-1984).

Counsel - At the commencement of any proceeding on behalf of a neglected or dependent youth, the court shall inform the parents of their right to counsel and right to be appointed counsel if unable to pay. Conn. Gen. Stat. Ann. §46b-135 (West Supp. 1983-1984).

The court shall provide an attorney to represent the child in any proceeding in which the child's custody is at issue. Conn. Gen. Ann. §46b-136 (West Supp. 1983-1984).

Cross-examination - Parents or guardians and their counsel have a right of confrontation and cross-examination of witnesses. Conn. Gen. Stat. Ann. §56b-135 (b) (West Supp. 1983-1984).

Inadmissibility of Statements - Any statement or confession of parents made after a neglect or dependency petition is filed is inadmissible in proceedings on that petition unless he was first advised of his right to counsel and that statements he made could be used against him. Conn. Gen. Stat. Ann. §46b-137 (b) (West Supp. 1983-1984).

Witnesses - In any juvenile hearing the court may summon witnesses and compel their attendance. Conversations of the court with the child are privileged. Conn. Gen. Stat. Ann. §46b-138 (West Supp. 1983-1984).

Availability of Records - All records of juvenile matters including social, probation and clinical reports are confidential but must be available to the attorneys for the child or parents. Conn. Gen. Stat. Ann. §46b-124 (a) (West Supp. 1983-1984).

Appeal - Parties at interest may appeal final judgments. Conn. Gen. Stat. Ann. §46b-142 (West Supp. 1983-1984).

Scheduling

Ninety days before expiration of each 18 month commitment, the commissioner of children and youth services shall petition court to revoke or extend commitment or terminate parental rights. Commitment may be extended a maximum of 18 months. Conn. Gen. §46b-129 (e) (West Supp. 1983-1984).

Authority of Court

The court may commit a child to commissioner for no more than 18 months unless extended by the court. The court may revoke the commitment, extend it or terminate parental rights under proper procedures. The court may place a child with an individual or the agency. Conn. Gen. Stat. Ann. §§46b-129 (d), (e), (g) (West Supp. 1983-1984).

Decision Required

After hearing on motion of Commissioner to extend or revoke commitment, the court may extend the commitment for 18 months on finding that the extension is in the child's best interest or revoke the commitment on finding that the cause for commitment no longer exists and that revocation would be in the child's best interest. Parental rights may be terminated under termination provisions. Conn. Gen. Stat. Ann. §46b-129 (d), (e), (g) (West Supp. 1983-1984).

Procedure

A review board appointed by the Governor reviews 50% of children in foster care no less than once every six months. Del. Code Ann. tit. 31, §§3803, 3809, 3810, 3814 (Interim Supp. 1983).

The review evaluates such matters as the goal of the permanent placement plan, services to the child and others involved, placement of siblings, length of time in foster care, number of placements, whether the child's wishes were considered, efforts to fulfill the plan by all individuals; opportunity to participate in visits, obstacles to hinder or prevent achievement of the placement goal. Del. Code Ann. tit. 31, §3810 (Interim Supp. 1983).

The Board must submit a written report of the review to the placement agency and participating parties. It must offer recommendations such as return home, adoption of the child, initiation of termination of parental rights proceedings, or continued foster care with or without approving the permanent placement plan. Del. Code Ann. tit. 31, §3814 (Interim Supp. 1983).

If within 15 days of the receipt of the review report, the agency disagrees with the Review Board recommendation, the board or other participating party may petition the Court within 20 days for a judicial hearing which shall be held within 45 days after the petition is filed. The board may petition the Court for a judicial hearing if there has been no documented action toward achieving permanency for the child during a six month period. Del. Code Ann. tit. 31, §§3815, 3816 (Interim Supp. 1983).

Coverage

Children placed by court order or placed voluntarily in a private placement agency for more than nine months except children placed for adoption. Del. Code Ann. tit. 31, §3802(2) (Interim Supp. 1983).

Procedural Safeguards

The Board shall send written notice of a scheduled review at least thirty days in advance to the agency, the child where appropriate, parents, legal guardian, foster parents, child's attorney if applicable and any other person or agency interested in or having information about the child. Del. Code Ann. tit. 31, §3811 (Interim Supp. 1983).

At least seven days before the review, the placement agency shall submit the permanent placement plan and written progress report. The placement agency is legally obligated to provide the board with needed information. The Board may petition the Family Court for a hearing if refused needed information. Del. Code Ann. tit. 31, §3812 (Interim Supp. 1983).

A judicial hearing by the Family Court of the State shall be held upon petition by the Board or participating party within 45 days after the filing date of such petition. The court shall send written notification of such hearing at least 15 days in advance to: the placement agency; the Executive Director; the child where appropriate; the parents or legal guardian; the foster parents; the child's attorney where applicable and other interested persons. Del. Code Ann. tit. 31, §§3815, 3816 (Interim Supp. 1983).

Scheduling

The Board may review 50% of the children in foster care no less than once every six months. Del. Code Ann. tit. 31, §3809 (Interim Supp. 1983).

A judicial hearing by the Family Court of the State shall be held upon a petition by the Board or participating party within 45 days after the filing of such petition because of agency disagreement with the Board recommendation or if no progress is made toward achieving permanency during a six month period. Del. Code Ann. tit. 31, §3815 (Interim Supp. 1983).

Authority of Court or Review Body

The review board issues a report with recommendations such as return to parents, adoption of child, initiation of termination of parental rights proceedings, continue in foster care (with an indication whether the permanent plan is appropriate or not). Del. Code Ann. tit. 31, §3814 (Interim Supp. 1983).

After a judicial hearing, on petition of the review board or party, the Family Court of the State may enter an order: directing the return of the child to his or her parents or guardian; continuing placement under the current permanent placement plan; continuing placement under a revised permanent placement plan. Del. Code Ann. tit. 31, §3817 (Interim Supp. 1983).

Decision Required

The Board shall submit a written report within 15 days to the placement agency and participating parties offering recommendations such as return home, adoption, initiation of TPR proceedings, continued foster care is the best current plan and the permanent placement plan for the child is or is not appropriate. Del. Code Ann. tit. 31, §3814 (Interim Supp. 1983).

After a judicial hearing, on petition of the review board or party, the Family Court of the State may enter an order: directing the return of the child to his or her parents or guardian; continuing placement under the current permanent placement plan; continuing placement under a revised permanent placement plan. Del. Code Ann. tit. 31, §3817 (Interim Supp. 1983).

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DISTRICT OF COLUMBIA

COURT REVIEW

Procedure

When a child has been adjudicated neglected and a dispositional order entered, the court shall hold a review hearing every 6 months for children under 6 years of age and for all who have been in placement less than 2 years; annually for all other children. D.C. Code Ann. §16-2323 (1981).

If a child has been in Department custody for 18 months without a motion for termination of parental rights having been heard and for each child who has been in custody three or more years, the court shall determine at the review why a motion to terminate parental rights has not been filed. D.C. Code Ann. §16-2355 (1981).

Coverage

Involuntary cases (including post-termination of parental rights). D.C. Code Ann. §16-2301 (1981).

Procedural Safeguards

Report - At least 10 days prior to each review hearing, the court or supervising agency shall submit a report to the court which shall include, but not be limited to the services offered and provided to the child and parent/guardian or custodian; any evidence of amelioration of conditions causing neglect and evidence of new problems which would adversely affect the child; evaluation of the cooperation of the parent, guardian or custodian with the Department; extent of visitation and reasons why infrequent or not at all; estimated time for return home; whether agency intends to file for TPR and why not; such other information as required by the Court. D.C. Code Ann. §16-2323 (b) (1981).

Notice of review hearing shall be given to all parties and their attorneys. D.C. Code Ann. §16-2323 (c) (1981).

Counsel, GAL, Party Status for Other Caretaker - Parents are entitled to be represented by counsel at all critical stages of abuse, neglect or termination proceedings, and if financially unable to pay counsel, to have counsel appointed by the court. The child shall be appointed a guardian ad litem who is an attorney. The GAL is charged with representing the child's best interests. If a child has lived with someone other than the parent for 12 months or more, such a person may be designated a party, at the court's discretion, and may be appointed counsel if unable to afford counsel. D.C. Code Ann. §16-2304 (1981).

Appeal - There is a right of appeal. D.C. Code Ann. §16-2329 (1981).

Scheduling

Review hearing by the court shall be conducted at least every 6 months for a committed child under 6 years of age and every 6 months for a child of any age committed for less than 2 years. D.C. Code Ann. §16-2323 (a) (1981).

Review hearings shall be held every year for children over 6 years committed more than 2 years. D.C. Code Ann. §16-2323 (a) (1981).

Review hearings for children in care 3 years or for those in care 18 months without a motion to terminate parental rights having been held in the prior 12 months, must consider why no such motion has been filed. D.C. Code §16-2355 (1981).

Authority of Court

If the court finds the committment of a child is no longer necessary to safeguard the child's welfare, the court may order return home or any other disposition authorized in the initial disposition provisions. D.C. Code Ann. §16-2323 (d) (1981).

The following dispositional options are available: 1) return home under supervision; 2) transfer of legal custody to a public or private agency or a qualified relative or other individual except that no child shall be ordered placed outside his or her home unless the Division finds the child cannot be protected in the home and there is an available placement that is likely to be less damaging to the child than the child's home. It shall be presumed that it is generally preferable to leave a child in his own home; 3) the Court may make such other disposition as is not prohibited by law and as the court deems to be in the best interest of the child. The Court may order any DC public agency or private agency receiving public funds to provide any needed services within its authority; 4) terminate parental rights; 5) commit a child for medical, psychiatric or other in-patient treatment. D.C. Code Ann. §16-2320 (a) (1981) (initial disposition options).

Decision Required

See "Authority of Court".

If a child has been in care for 3 years or has been in care for 18 months without a motion to terminate parental rights having been filed in the prior 12 months, the court shall determine at the review why no such motion has been filed. D.C. Code Ann. §16-2355 (1981).

REVIEW AFTER TERMINATION OF PARENTAL RIGHTS

Procedure

If an adoptive placement has not been made within 6 months of termination, a hearing shall be held and another held every 6 months thereafter at which time the Department shall report on its efforts to secure adoptive placement. D.C. Code Ann. §16-2360 (1981).

Coverage

Involuntary cases. D.C. Code Ann. §16-2301 (1981).

Procedural Safeguards

If adoptive placement has not been secured, the agency must report to the court on its efforts to secure adoptive placement including the extent adoption was explored with the child's foster parent and why

not appropriate, dates and names of all adoption exchanges listings and limitations placed on families considered for adoption. (c) This information is to be given to the GAL 10 days prior to the review hearing. (d) Notice of the review hearing shall be given to the GAL and any person with whom the child has resided for 6 months or more who shall, upon request, be joined as a party. D.C. Code Ann. §16-2360 (b), (c), (d) (1981).

Scheduling

If adoptive placement has not been secured, a review hearing is to be held every 6 months. D.C. Code Ann. §16-2360 (b) (1981).

Authority of Court

If the court finds the agency with custody of the child is not making sufficient efforts to secure an adoption or inappropriate limits have been placed on potential adoptive families, the court may order such additional efforts as appropriate or order elimination of inappropriate limits or order transfer of power to consent to adoption to another agency. D.C. Code Ann. §16-2360 (e) (1981).

Decision Required

See "Authority of Court".

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Procedure

In any voluntary (see "coverage") or involuntary foster care placement case, the court clerk shall schedule a review hearing no later than 6 months after placement is ordered or the court is notified of voluntary placement, and at least annually after placement until the child is no longer in the custody of the department or agency. Fla. Stat. Ann. §409.168(f)(2) (Supp. 1981).

The performance agreement (case plan) expires no later than the second annual judicial review. If at the time of that hearing the child is not returned home the agency must initiate termination proceedings unless the court finds by clear and convincing proof that the situation of the child is so extraordinary the performance agreement (i.e., foster care case plan) should be extended. Fla. Stat. Ann. §409.168(3)(c), (3)(f)(2)(Supp. 1981).

If in preparation for a judicial review hearing, the social service agency believes the parents have not complied with the performance agreement although able to do so, the agency shall state its intent to initiate TPR proceedings which shall be filed no later than 3 months from the date of the previous hearing unless the agency has provided the court with a written report as to reason for delay, progress made in the permanent commitment process and anticipated date for completion. Fla. Stat. Ann. §409.169(3)(g)(1) (Supp. 1981).

Coverage

Involuntarily placed children are covered. There is a conflict in the law with respect to coverage of voluntarily placed children and children placed in adoptive homes. Minors who are refugees and to whom federal regulations apply are not covered. Fla. Stat. Ann. §409.168(7); §39.41 (Supp. 1981).

Procedural Safeguards

Parents are entitled to notice at the time the performance agreement (case plan) is entered into that placement of the child in foster care can result in termination of parental rights and that the court must return the child to the parents on expiration of the agreement if they have substantially complied with its terms. Fla. Stat. Ann. §409.168(3)(a)6.f (Supp. 1981).

Notice - Notice of the review hearing and a copy of the petition including a statement of the dispositional alternatives if the court shall be served upon: the social service agency; the foster parent(s) in whose home the child resides; the parent, or relatives who transferred the care and custody of the child to the social service agency; other parties and participants in the agreement; the child and the guardian ad litem. Fla. Stat. Ann. § 409.168(4) (Supp. 1981); Rule 8.800(c)(3)(i), Fla. Rules Juv. Proc.

Case Report - The social service agency must make an investigation and social study and furnish the court with a written report including recommendations and status of compliance with each provision of the performance agreement. A copy of the written report shall be provided to the parents' attorney or to the parents or guardian at least [illegible] prior to the judicial review hearings. [This requirement for providing parents with a copy of the written report does not apply to those parents or guardians who have voluntarily recommended their children for adoption]. Fla. Stat. Ann. §409.168(3)(g) (Supp. 1981).

Counsel/GAL - The child has a right to appointment of a guardian ad litem (Case law holds that parents have a right to counsel in all cases in which termination of parental rights may result.) Fla. Stat. Ann. §415.508. (Supp. 1981)

Witness, cross-examination - All parties and participants have the right to subpoena, present and cross-examine witnesses. Fla. Rules Juv. Proc.

Record and written findings - Parties have a right to a record of the proceedings and to written findings and orders. Fla. Rules Juv. Proc.

Appeal - Child and parents have a right of appeal. Fla. Stat. Ann. §39.413 (Supp. 1981).

The court may dispense with the attendance of the child at the hearing. Fla. Stat. Ann. §409.168(3)(i) (Supp. 1981).

In determining whether an agreement should be extended, the court shall consider information provided by the social service agency, the natural parent or parents, and the foster parents and any other information requested by the court. Fla. Stat. Ann. §409.168(3)(c) (Supp. 1981).

Scheduling

In any foster care placement case the court clerk shall schedule a review hearing no later than six months after placement is ordered or the court is notified of voluntary placement, and at least annually after placement until the child is no longer in department or agency custody. The second annual review must focus on a decision for the child. Fla. Stat. Ann. §409.168(3)(f)(2),(3)(c) (Supp. 1981).

Authority of Court or Review Body

(See "decision required", below, for court's ability to order return home or continued foster care, within limits.)

At a review hearing the court may issue a protective order in assistance, or as a condition of, any other order under the act. The protective order may set forth requirements in addition to those included in the performance agreement relating to reasonable conditions of behavior to be observed for a specified period of time by a person or agency who is before the court and may require any such person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe. Fla. Stat. Ann. §409.168(5) (Supp. 1981).

(In addition, case law has established that the court may order the department to file a termination case, to pursue a specific permanency planning goal, to pursue guardianship to place all children in one adoptive home.)

If the court finds that the social service agency has not complied with the performance agreement obligations, the court may find it in contempt and order the agencies to submit its plan for compliance and to show cause why the child should not be returned immediately to the home. Fla. Stat. Ann. §409.168(3)(g)(2) (Supp. 1981).

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Decision Required

If the parents have substantially complied with the performance agreement the court may return the child to the parents at the expiration of the agreement (which is no later than the second annual review). If the court finds by clear and convincing proof that the situation of the child is so extraordinary the foster care agreement should be extended, the court may do so for a 6 month period (for children under 13) or a maximum 12 month period (for children 13 or older). The foster care agreement must be extended 6 months if the court finds the parents' noncompliance is the fault of the social service agency. Fla. Stat. Ann. §409.168(3)(a)6.h,(3)(c),(3)(e) (Supp. 1981).

Procedure

A dispositional order in a deprivation case may not last over 2 years unless a hearing is held prior to the expiration of the order on the motion of a party, or the court's own motion, to extend the order. The new order may not extend beyond two years. Ga. Code §15-11-41(c) (1982).

If a child is not adopted within two years after date of termination order and a general guardian has not been appointed, child shall be returned to court for further orders for child's care, control, custody. Ga. Code §15-11-54(c) (1982).

Coverage

Involuntary placement cases. Ga. Code §15-11-2(8)(A-D) (1982).

Procedural Safeguards

Notice: A hearing must be held. Reasonable notice of the factual basis of the motion and of the hearing must be given to parties affected. The affected parties must be given an opportunity to be heard. Ga. Code §15-11-41(c) (1982).

A summons may be personally served, or if party cannot be found at home, served by mail within the state or served personally or by registered or certified mail on an out-of-state resident. Service by publication may be used if an address cannot be ascertained. Ga. Code §15-11-27(a)(b)(c) (1982).

Right to Counsel - A party is entitled to representation by legal counsel at all stages of any proceeding alleging deprivation and is entitled to appointed counsel if party cannot afford counsel. Ga. Code §15-11-30(b) (1982).

Counsel must be provided for a child not represented by his parent, guardian, or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them. Ga. Code §15-11-30(b) (1982).

The court at any stage of a proceeding under this chapter on application of a party or on its own motion shall appoint a guardian ad litem for a child who is a party to the proceeding if child has no parent, guardian, or custodian appearing on the child's behalf or if their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or his employee or representative shall not be appointed. Ga. Code §15-11-55 (1982).

A party is entitled to the opportunity to introduce evidence and otherwise be heard on his own behalf and to cross-examine adverse witnesses. Ga. Code §15-11-31(a) (1982) (General Provision).

Witnesses may be subpoened for any proceeding under juvenile code. Ga. Code §15-11-22 (1982).

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When a petition is filed to change, modify or vacate an order, the court shall cause notice to be served, a summons is served and a hearing, which may be informal, held. Ga. Code §15-11-42(d) (1982).

When a case is assigned to a referee to hear a juvenile matter, a party may have the case heard by a judge if so requested for the initial hearing as well as for rehearing after notice of the referee's findings and recommendations. Ga. Code §15-11-10 (1982).

Recording of Hearings - Unless waived by the juvenile and juvenile's parent, guardian, or attorney, the proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. Ga. Code §15-11-28(b) (1982).

In all cases of final judgments of a juvenile court judge, appeals shall be taken to the Court of Appeals or the Supreme Court in the same manner as appeals from the Superior Court. Ga. Code §15-11-64 (1982).

If a petition for modification of orders is filed, the court must set a hearing and cause notice to be served on the parties to the proceeding or those affected by the relief sought. The hearing may be informal. The court shall grant or deny relief as the evidence warrants. Ga. Code §15-11-42(d) (1982).

Scheduling

Disposition order may not continue in force for more than 2 years. Ga. Code §15-11-41(c)(1) (1982).

To extend an order beyond 2 years a hearing must be held prior to the expiration of the order on a party's or the court's motion. Ga. Code §15-11-41(c)(1) (1982).

If a child is not adopted within two years after date of termination order and a general guardian has not been appointed, child shall be returned to court for further orders for child's care, custody and control. Ga. Code §15-11-54(c) (1982).

Authority of Court or Review Body

The court may extend the order if it finds that extension is necessary to accomplish the purposes of the order extended and the extension is not for more than two years after the prior order would expire. Ga. Code §15-11-41(c)(3)(4) (1982).

The court may terminate the order early if it appears to the court the purposes of the order have been accomplished. Ga. Code 15-11-41(d) (1982).

Decision Required

The foster care order may be extended up to two years if the court finds that the extension is necessary to accomplish the purposes of the order extended. The court may terminate the order early if it appears the purposes of the order have been accomplished. Ga. Code §15-11-41(c) (1982).

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Procedure

The court sets each case for review hearing not later than six months after the date service plan ordered. The court sets subsequent review hearings at intervals of no longer than six months until the court's jurisdiction is terminated. Hawaii Rev. Stat. §587-72(a)-(d) (Supp. 1983).

The court considers the need for permanency planning for the child at each review hearing and at the twelve-month review hearing, if the child is not returned to the child's family, the court shall proceed to enter orders on the child's future status as follows. If the child was under three at the time of entry into foster case the court must issue such orders at the 12 month review if the family has substantially failed to comply with the service plan and both the guardian ad litem and agency support a decision at 12 months. A decision on the child's future status shall be made at the 12 month hearing for children who entered care at age 3 or older if the previous conditions are met and, in addition, the parties have no explanation for non-compliance. Decisions on siblings shall be made at the same time based on the age of the younger child. In any event, a decision on the future status of the child must be made at the 18 month hearing if it has not been made previously. Hawaii Rev. Stat. §587-72 (Supp. 1983).

Coverage

Each case in which a service plan is ordered by the court. Children may remain in voluntary foster case for up to one year without necessity of court involvement after which a petition must be filed. Hawaii Rev. Stat. §§587-21, 587-72 (Supp. 1983).

Procedural Safeguards

Notice - Notice of review hearing shall be served upon the parties and upon the present foster parent or parents, each of whom shall be a party entitled to participate in the proceedings. Hawaii Rev. Stat. §587-72(b) (Supp. 1983).

Written Report - Within a reasonable period of time prior to each hearing in a child protective proceeding, the department or other appropriate authorized agency shall submit a written report to the court with copies to all parties or their counsel or guardian ad litem setting forth the then-current situation of the child and the recommendations as to the orders or further orders as are deemed to be in the best interests of the child and the basis for each of such recommendations, including whether the child's family is willing and able to exercise or provide the child with a safe home, if the child's placement is at issue at such hearing. Such a report must be filed 15 days prior to each review hearing or an explanation be provided of why this is not being done. The report shall: (1) evaluate whether the parties have complied with the service plan ordered; (2) recommend whether the court should enforce the consequences of service plan pertaining to the compliance or noncompliance; (3) recommend whether the court should order revisions to existing plan, and if so, set forth proposed revisions and basis for recommending such revisions; and (4) set forth recommendations for further orders deemed appropriate and state basis for recommendations. Hawaii Rev. Stat. §§587-41(c), 587-72(c)(d) (Supp. 1983).

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Scheduling

Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a service plan is ordered by the court and thereafter, the court shall set subsequent review hearings at intervals of no longer than six months, until the court's jurisdiction has been terminated. Hawaii Rev. Stat. §587-72(a) (Supp. 1983).

The court considers the need for permanency planning for the child at each review hearing and at the twelve-month review hearing, if the child is not returned to the child's family, the court shall proceed to enter orders on the child's future status as follows. If the child was under three at the time of entry into foster care the court must issue such orders at the 12 month review if the family has substantially failed to comply with the service plan and both the GAL and agency support a decision at 12 months. A decision on the child's future status shall be made at the 12 month hearing for children who entered care at age 3 or older if the previous conditions are met and, in addition, the parties have no explanation for non-compliance. Decisions on siblings shall be made at the same time based on the age of the younger child. In any event, a decision on the future status of the child must be made at the 18 month hearing if it has not been made previously. Hawaii Rev. Stat. §587-72 (Supp. 1983).

Authority of Court

At each review hearing and at the twelve-month review hearing, if the child is not returned to the child's family, the court shall proceed to enter orders consistent with age-based criteria - mandatory permanency planning is required for a child who was under 3 at the time of placement. Hawaii Rev. Stat. §587-72(f)(1)-(4) (Supp. 1983).

At the eighteen-month review hearing, if the child cannot be returned to the family home at that time, and if the decision was not made earlier, the court shall order permanancy planning for the child as follows: (1) that a petition for termination of parental rights be commenced as soon as practicable, (2) that a petition for guardianship be commenced as soon as practicable; (3) that if child is sixteen years of age, and is of sufficient physical and psychological maturity, the court may order that the child be deemed emancipated; (4) that the child shall remain in long-term foster care until the age of majority pursuant to long-term foster care contract unless the child is emancipated before then. Long-term foster care status shall not be subject to modification or revocation except, upon a showing of extraordinary circumstances to the court. Hawaii Rev. Stat. §587-72(h)(1)-(4) (Supp. 1983).

Decision Required

At the eighteen month hearing the court must order "permanancy planning" for the child. Hawaii Rev. Stat. §587-72 (f), (g), (h) (Supp. 1983). (The "permanancy planning" options are specified in "Authority of the Court", above.)

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Procedure

A decree vesting legal custody in the state agency or other authorized agency shall not extend beyond one year unless renewed. To renew an order of custody to the state agency, the agency must petition for a renewal and a hearing must be held and findings made after notice to the parties. Idaho Code §16-1610 (c) (Supp. 1983).

[Regulatory Prov. Social Service Policy Memo (1982). Children committed under the Youth Rehabilitation Act in care for over 18 months shall have an administrative or judicial disposition hearing by an individual not associated with the case. If the child remains in alternative care, judicial or administrative dispositional hearings shall be held every 18 months. (Hearing procedure was approved by Idaho Court Administrator).]

Coverage

Involuntary placement cases (abandoned, neglected, abused children). Idaho Code §16-1602 (Supp. 1983).

[Reg. Prov. Social Service Policy Memo (1982). Children committed under the Youth Rehabilitation Act.]

Procedural Safeguards

Notice, Findings - To renew an order vesting custody in the state agency, the agency must petition to renew the order. The court may renew the order after notice to the parties, a hearing and findings. Idaho Code §16-1610 (Supp. 1983).

Reports - The department shall make periodic evaluations of all persons in its custody to determine whether existing orders and dispositions shall be modified or continued in force. Reports of the evaluation shall be filed with the court. Idaho Code §16-1623 (d) (Supp. 1983).

The department shall report to the court as the court requests but shall report progress of the child no less than every 6 months. Idaho Code §16-1623 (d) (Supp. 1983).

Failure of the department to evaluate or re-evaluate a case shall entitle the child, parent, guardian, custodian or his counsel to petition the court pursuant to §16-1611 for a modification and revocation hearing. Idaho Code §16-1623 (d) (Supp. 1983).

Counsel - The court shall appoint separate counsel and in appropriate cases a guardian ad litem for the child or children to serve at each stage in the proceeding. The court may appoint independent counsel for a parent if the proceedings are complex, counsel is necessary to protect the parent's interests adequately and such interests are not represented adequately by another party. Idaho Code §16-1618 (a) (Supp. 1983).

Appeal - Any interested party aggrieved by any decree or order of the court may appeal to the district court within thirty (30) days of the filing of such order or decree. Idaho Code §16-1617 (Supp. 1983).

[Regulatory Provision Social Services Policy Memo (1982). The 18-month administrative dispositional hearing must include advance written notice to parties of actions to be taken; opportunity for face to face discussion, including attending, asking questions and making statements; opportunity to be accompanied by a representative of their choice and opportunity for recourse/appeal; written record of hearing.]

Authority of Court

A decree vesting legal custody may be renewed by the agency if necessary to safeguard the child's best interest after notice to the parties, hearing and findings. Order may be extended 1 year if in best interests of child. Idaho Code §16-1610 (c) (Supp. 1983).

A decree vesting legal custody in an authorized agency other than the state agency may be extended by the court on the agency's showing that continued custody is necessary for the child's best interest. Idaho Code §16-1610 (b) (1) (Supp. 1983).

Decision Required

See "Authority of Court."

Procedure

Each agency which has guardianship of the child must file a supplemental petition for review by the court or by an administrative body appointed or approved by the court within 18 months of the original dispositional order and every 18 months thereafter. Ill. Rev. Stat. ch. 37, §705-8, §5-8 (2) (1982-1983).

A hearing must be set on the petition for review. Ill. Rev. Stat. ch. 37 ¶705.8, §5-8 (2) (1982-1983).

Coverage

Involuntary placement cases. Ill. Rev. Stat. ch. 37 ¶702-4, §2-4 (Supp. 1982-1983).

Procedural Safeguards

Petition, Notice - The petition for court review filed within 18 months of the disposition order shall state facts relative to the child's present physical, mental, and emotional health and present placement. The petition shall be set for hearing and the clerk shall mail 10 days notice of the hearing by certified mail to the minor and other interested parties unless a written waiver of notice is filed with the petition. Ill. Rev. Stat. ch. 37 ¶705-8 (2) (Supp. 1982-1983).

Report - The court may require any legal custodian or guardian of the person to report periodically to the court and require the custodian, guardian or agency to make a full and accurate report of custodian's/guardian's actions in behalf of the minor. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (1) (Supp. 1982-1983).

The custodian or guardian shall make the report within 10 days in writing verified by affidavit or orally under oath in open court or otherwise as the court directs. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (1) (Supp. 1982-1983).

A guardian or custodian appointed by the court shall file updated case plans with the court every 6 months. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (2) (Supp. 1982-1983).

Investigation of Parental Fitness - In order to be able to return custody of a child to a parent who physically abused the child, there must be an investigation of the parent to determine if the parent has been charged with or convicted of any criminal offense which would indicate the likelihood of physical abuse to the minor. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (4) (Supp. 1982-1983).

Any conclusions or recommendations derived from the investigation shall be provided to the parent prior to the hearing. A hearing must specifically address the question of fitness of the parent and the parent shall have the opportunity to refute the information and contest its significance at the hearing. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (1) (Supp. 1982-1983).

No information obtained from the fitness investigation shall be placed in the automated information system and shall be confidential. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (4) (c) (Supp. 1982-1983).

Additional Parties, Notice - Though not appointed guardian or legal custodian or otherwise made a party to the proceeding, all current and previous foster parents or representatives of an agency or association interested in the minor has the right to be heard by the court, but does not thereby become a party to the proceeding. In addition to the right to be heard by the court, any current foster parent of a minor and the agency designated by the court or the Department of Children and Family Services as custodian of the minor adjudicated a neglected minor, or a dependent minor, has the right to and shall be given adequate notice at all stages of any hearing or proceeding under this act wherein the custody status of the minor may be changed. Ill. Rev. Stat. ch. 37 ¶701-20, §1-20 (2) (Supp. 1982-1983) (general provision).

Parties, Witnesses, Discovery, Counsel - The minor and minor's parents, guardian, legal custodian or responsible relative who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also the right to be represented by counsel. At the request of any party financially unable to employ counsel, the court shall appoint the Public Defender or such other counsel as the case may require. Ill. Rev. Stat. ch. 37 ¶701-20, §1-20 (Supp. 1982-1983).

Child's Attendance - In the discretion of the court, a minor may be excluded from any part or parts of a dispositional hearing. Ill. Rev. Stat. ¶701-20, §1-20 (5) (Supp. 1982-1983).

Counsel - No hearing on any petition filed under the act may be commenced unless the minor who is the subject of the proceeding is represented by counsel. Ill. Rev. Stat. ch. 37 ¶705-8 (Supp. 1982-1983).

GAL - Unless the guardian ad litem is an attorney, he shall be represented by counsel. Ill. Rev. Stat. ch. 37 ¶704-5, §4-5 (3) (Supp. 1982-1983).

The court may appoint a GAL for the minor if the child was a victim of sexual abuse or misconduct or the victim of any sex offense where charges have been filed against the defendant. Ill. Rev. Stat. ch. 37 ¶704-5, §4-5 (1) (Supp. 1982-1983).

The court shall appoint a GAL for the minor if no parent, guardian, custodian or relative of the minor appears at the first or subsequent hearing; the petition prays for appointment of a GAL to consent to adoption or the petition is before the court because of an abuse or neglect report. Ill. Rev. Stat. ch. 37 ¶704-5, §4-5 (2) (Supp. 1982-1983).

Whenever the petition alleges physical abuse of a minor by minor's parent/guardian, the GAL must have at least one face to face interview with the minor before the adjudicatory hearing. Ill. Rev. Stat. ch. 37 ¶704-5, §4-5 (4) (Supp. 1982-1983)

The court may appoint a GAL for the minor whenever it finds that there may be a conflict of interest between the minor and minor's parents or other custodian or that it is otherwise in the minor's interest to do so. Ill. Rev. Stat. ch. 37 ¶704-5, §4-5 (2) (Supp. 1982-1983) (general provision).

Scheduling

Agency must file supplemental petition for review by court or administrative body appointed or approved by court within 18 months of the original dispositional order and every 18 months thereafter. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (2) (Supp. 1982-1983).

Authority of Court

In any case where a child is found by the court to be neglected or dependent as a result of physical abuse, custody of the minor shall not be returned to any parent, guardian or legal custodian found by the court to have inflicted the physical abuse until a hearing is held on the issue of fitness and the court orders that such parent, guardian or legal custodian is fit to care for the minor. Ill. Rev. Stat. ch. 37, ¶705-8, §5-8 (3) (Supp. 1982-1983) (court review).

The court may remove the custodian or guardian and appoint another in custodian/guardian's place or restore minor to the custody of minor's parents or former guardian or custodian after a hearing on a court ordered report from the present legal guardian. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (1) (Supp. 1982-1983).

The court has the authority to remove the custodian or guardian and appoint another in custodian/guardian's stead or to restore the minor to the custody of minor's parents or former guardian or custodian. However, the child may not be returned to the custody of a parent or custodian found to be abusive without a hearing on the present fitness of the parent or former custodian to care for the child. Ill. Rev. Stat. ch. 37 ¶705-8, §5-8 (1) (Supp. 1982-1983).

See also "Decision Required".

Decision Required

No specific decision is required on eighteen month review.

Procedure

Eighteen months after the original dispositional decree, or 18 months after a child is removed from home, whichever comes first the court must hold a formal hearing on the question of continued jurisdiction. To continue jurisdiction, the state must show the objectives of the foster care decree have not been met and that continuation of decree has a probability of success. If the State cannot justify continued court jurisdiction, the court may authorize a petition for termination of parental rights or may return the child home. Ind. Code Ann. (Burns 1980);P.L. 285-1983, §3, 1983 Sess. Laws 1383.

Coverage

Involuntary Placements. Ind. Code Ann. §31-6-4-19 (Burns 1980).

Involuntary Placement cases. Ind. Code Ann. §31-6-4-3 (Burns 1980).

Procedural Safeguards

The eighteen month hearing must be a formal hearing on the question of continued jurisdiction. The state has the burden of showing that jurisdiction should continue. Ind. Code Ann. §31-6-4-19(c) (Burns 1980).

Before the 18 month review hearing the probation or county department shall prepare a report on the progress made in implementing the dispositional decree, including progress made in reuniting the family. If modification of the decree is recommended the department shall prepare a modification report as in §31-6-4-15. Any report prepared for use at the hearing shall be made available to the child and child's parent/guardian, GAL or custodian within a reasonable time after its presentation to the court or before the hearing unless the court determines on the record that the report contains information that should not be released to the child or parent. In that event, the court shall provide a copy to any attorney or GAL representing the child or any attorney representing the parent, guardian, custodian. It may also provide a factual summary to the child or parent. Ind. Code Ann. §31-6-4-19(d)(e) (Burns 1980).

Any report may be admitted into evidence to the extent of its probative value even if the evidence would otherwise be excluded. If a report contains information that should not be released to the child or parent et al, a factual summary of the report may be admitted. The child, child's parent and the person representing the state shall be given a fair opportunity to controvert any part of the report admitted into evidence. Ind. Code Ann. §31-6-4-19(f) (Burns 1980).

Except where excluded from a hearing, the child is entitled to: cross-examine witnesses; obtain witnesses or tangible evidence by compulsory process; and to introduce evidence in own behalf. Ind. Code Ann. §31-6-3-1 (Burns 1980) (General provision; not clear if applies to 18 month hearing).

A parent or guardian is entitled to: cross-examine witnesses; obtain witnesses or tangible evidence by compulsory process; and to introduce evidence in parent's or guardian's own behalf. Ind. Code Ann. §31-6-3-2 (Burns 1980) (General provision; not clear if applies to 18 month hearing).

The juvenile court may appoint a guardian ad litem for the child at any time. A guardian ad litem need not be an attorney, but the attorney representing the child may be appointed child's guardian ad litem. A guardian ad litem shall represent and protect the best interest of the child. The court has discretion to appoint counsel to represent parents in child protective proceedings. Ind. Code Ann. §31-6-7-2(b) (Burns 1980).

Scheduling

Every 18 months after date of original disposition, or every 18 months after a child was removed from child's parent, guardian or custodian, whichever comes first, court must hold a formal hearing on the question of continued jurisdiction. Ind. Code Ann. §31-6-4-19(c) (Burns 1980); P.L. 285-1983, §3, 1983 Sess. Laws 1383.

Authority of Court or Review Body

If the state does not sustain its burden for continued jurisdiction, the court may: authorize a petition for termination of parent-child relationship; or discharge the child or child's parent, guardian, or custodian. The court may continue jurisdiction on a showing that it should continue. Ind. Code Ann. §31-6-4-19(c) (Burns 1980).

Decision Required

Jurisdiction may be continued if the state shows that jurisdiction should continue by proving that the objectives of the original dispositional decree have not been accomplished and that a continuation of the decree with or without any modifications has a probability of success. Ind. Code Ann. §31-6-4-19(c) (Burns 1980).

When the juvenile court finds that the objectives of the disposition decree have been met, the court shall discharge the child and child's parent, guardian, or custodian. Ind. Code Ann. §31-6-4-19(g) (Burns 1980).

If the state does not sustain its burden for continued jurisdiction, the court may authorize a petition for termination of parental rights or discharge the child or child's parent, guardian, or custodian. Ind. Code Ann. §31-6-4-19(c) (Burns 1980).

Procedure

Hearing required six months after an order of placement to review placement and decide whether child should be returned home, placement should be extended, or termination of the parent-child relationship should be pursued. Iowa Code Ann. §232.102.6 (West Supp. 1983-1984).

Coverage

Involuntary placement cases. Iowa Code Ann. §232.2.1.5 (West Supp. 1983-1984).

Procedural Safeguards

Hearing - At the end of the six month placement order the court shall hold a hearing and review the placement. Iowa Code Ann. §232.102.6 (West Supp. 1983-1984).

Parties - Any hearings or proceedings held subsequent to the filing of a petition shall not take place without the presence of the child's parent, guardian, or custodian in accordance with and subject to the provisions of statute. A parent without custody may petition the court to be made a party to proceedings. Iowa Code Ann. §232.91 (West Supp. 1983-1984).

Presence of Parents - Generally, hearings on proceedings will not take place without the presence of the child's parent, guardian or custodian. Iowa Code Ann. §232.91 (West Supp. 1983-1984).

Record - Stenographic notes or mechanical recordings shall be taken unless waived by the parties. Iowa Code Ann. §232.94 (West Supp. 1983-1984).

Right to Counsel - Parent, guardian, or custodian (identified in original petition) shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel. Iowa Code Ann. §232.89 (1) (West Supp. 1983-1984).

The court shall appoint counsel and a guardian ad litem for the child upon the filing of the original petition. Counsel for the child shall be appointed if counsel for the child retained by the parent has a conflict of interest with the child. The court may order the parents to pay for the child's counsel if financially able to do so. Iowa Code Ann. §232.89 (2) (West Supp. 1983-1984).

Juvenile Rules - The Supreme Court is authorized to promulgate rules of juvenile procedure. Iowa Code Ann. §232.152 (West Supp. 1983-1984).

Scheduling

Hearing required six months after an order of placement to review placement and decide whether child should be returned home, placement should be extended, or termination of the parent-child relationship should be pursued. Iowa Code Ann. §232.102.6 (West Supp. 1983-1984).

Authority of Court

At each six month hearing the court shall review placement and decide whether child should be returned home, placement should be extended, or termination of the parent-child relationship should be pursued. If the placement is extended, the court should determine whether additional services are necessary to facilitate the return of the

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child to his or her home, and if the court determines such services are needed, the court shall order the provision of such services. Iowa Code Ann. §232.102.6 (West Supp. 1983-1984).

Decision Required

At the expiration of the six month period, the court shall hold a hearing and review the placement in order to determine whether the child should be returned home, an extension of the placement should be made, or a termination of the parent-child relation proceeding should be instituted. The placement should be terminated and the child returned to his or her home if the court finds by a preponderance of the evidence that the child will not suffer harm as specified by statute. If the order is extended the court should determine whether additional services are necessary to facilitate return of the child and order them if they are. Iowa Code Ann. §232.102.6 (West Supp. 1983-1984).

Procedure

If a child is placed outside his/her home and no plan is made part of the record of the dispositional hearing, a written plan for reintegration of the child into the child's family including measurable objectives and time tables shall be submitted to the court within 60 days of the dispositional order. A court services officer or the Secretary shall submit to the court at least every 6 months a written report re. progress toward the plan goals which shall be reviewed by the court. If the court determines progress is inadequate, the court, upon notice to all interested parties and after hearing, may rescind any of its prior dispositional orders and enter any dispositional order authorized by the Code or order that a new reintegration plan be submitted to the court. Kan. Stat. Ann. §38-1565 (Supp. 1983).

After termination of parental rights the person or agency with custody shall within 60 days submit a written plan for placement including measurable objectives and timetables. Not less than every six months, a progress report on finding an adoptive home or long-term foster care placement shall be submitted to the court. If the court determines progress is inadequate, it may hold a hearing and make appropriate new orders. Kan. Stat. Ann. §38-1584(c) (Supp. 1983).

Coverage

Involuntary placement cases. Kan. Stat. Ann. §38-1502(a) (Supp. 1983).

Post-termination cases. Kan. Stat. Ann. §38-1584(c) (Supp. 1983).

Procedural Safeguards

Where on the basis of a written report court has determined that progress is inadequate, it may rescind or modify its dispositioned order, upon notice to all interested parties and after a hearing. Kan. Stat. Ann. §38-1565(b) (Supp. 1983).

Service of notice of hearings and other process may be made by personal service, residential service, restricted mail service, regular mail service, service by publication. Special provisions cover service on a confined parent and the methods for proof of service. Kan. Stat. Ann. §38-1534-35 (Supp. 1983).

The form of notice of a hearing is specified. Kan. Stat. Ann. §38-1536 (Supp. 1983).

Witnesses may be subpoenaed and paid in proceedings under this Code. Kan. Stat. Ann. §38-1537 (Supp. 1983).

On hearing finding discovery would expedite proceedings, judge may order discovery. Kan. Stat. Ann. §38-1545 (Supp. 1983).

Foster parents and relatives may move to be determined interested parties. Kan. Stat. Ann. §38-1541 (Supp. 1983).

In all proceedings under this Code the rules of evidence of the code

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of civil procedure apply with exceptions relating to admissibility of evidence barred by doctor/patient privilege, admissibility of reports under statutory provisions. Kan. Stat. Ann. §38-1554 (Supp. 1983).

Upon the filing of a petition the court shall appoint a person who is an attorney to serve as guardian ad litem for a child who is the subject of proceedings under this code. A guardian ad litem appointed for a child or an attorney appointed for parent/custodian shall continue to represent the client at all subsequent hearings in proceedings under this statute, including any appellate proceedings, unless relieved by the court upon a showing of good cause or upon a transfer of venue. Kan. Stat. Ann. §38-1505(a), (d) (Supp. 1983).

A parent or custodian of a child alleged or adjudged to be a child in need of care may be represented by an attorney, other than the guardian ad litem appointed for the child, in connection with all proceedings. If at any stage a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend the hearing after having been properly served with process in accordance with statute. A parent or custodian who is not a minor, mentally ill or incapacitated may waive counsel either in writing or on the record. Kan. Stat. Ann. §38-1505(b), (c) (Supp. 1983).

The Court shall appoint an attorney for a parent who is a minor, a mentally ill person or an incapacitated person as defined by statute, unless the court determines that there is an attorney retained who will appear and represent the interests of the person under this proceeding. Kan. Stat. Ann. §38-1505(c) (Supp. 1983).

If the court finds inadequate progress is being made the court may hold a hearing and issue new orders. Kan. Stat. Ann. §38-1584(c) (Supp. 1983).

Scheduling

Court shall review progress report on reintegration plan submitted every six months by agency and if court determines progress is inadequate, court may hold hearing and rescind or modify its dispositional order. Kan. Stat. Ann. §38-1565(b) (Supp. 1983).

If parental rights are terminated a written plan for permanent placement shall be submitted to the court within 60 days and a progress report submitted at least every six months. If the court determines inadequate progress is being made toward finding an adoptive home or establishing long-term foster care placement, the court may hold a hearing and make appropriate orders. Kan. Stat. Ann. §38-1584(c) (Supp. 1983).

Authority of Court or Review Body

If the court determines that progress is inadequate, the court, upon notice to all interested parties and after a hearing may rescind any of the prior dispositional orders, order that a new plan for the reintegration be prepared and submitted to the court or enter any dispositional order authorized by statute. Kan. Stat. Ann. §§38-1563; 1565(b) (Supp. 1983).

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If the court finds that placing the child in the custody of a parent will not assure protection from physical, mental or emotional abuse or neglect or sexual abuse or will not be in the best interests of the child, the court may enter an order awarding custody of the child until further order of the court, to one of the following: 1) a relative or other suitable person; 2) a shelter facility; or 3) the secretary. Kan. Stat. Ann. §38-1563(d) (Supp. 1983).

Court on own motion, or motion of interested party, may enter an order discharging child. Kan. Stat. Ann. §38-1503(d) (Supp. 1983).

Upon receipt of periodic written report re. permanent placement by person or agency with custody of child, the court shall review the contents thereof and determine whether a hearing should be held on the subject. If court determines that inadequate progress is being made toward finding an adoption placement or establishing an acceptable long-term foster care placement, the court may rescind its prior orders and make other orders regarding custody and adoption that are appropriate under the circumstances. Kan. Stat. Ann. §38-1584(c) (Supp. 1983).

Decision Required

If the court determines that progress is inadequate, the court, upon notice to all interested parties and after a hearing may rescind any of the prior dispositional orders and enter any dispositional order authorized by statute or may order that a new plan for reintegration be prepared and submitted to the court. Kan. Stat. Ann. §38-1565(b) (Supp. 1983).

Court on own or motion of interested party, may enter order discharging child. Kan. Stat. Ann. §38-1503(d) (Supp. 1983).

Upon receipt of each report re. permanent placement the court shall review the contents thereof and determine whether or not a hearing should be held on the subject. If the court determines that inadequate progress is being made toward finding an adoption placement or establishing an acceptable long-term foster care plan, the court may rescind its prior orders or make other orders regarding, custody and adoption that are appropriate under the circumstances. Kan. Stat. Ann. §38-1584(c) (Supp. 1983).

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Procedure

The Chief Regional District Judge may establish in each judicial district court region five member local foster care citizen review board(s) meeting no less than four times annually. Ky. Rev. Stat. Ann. §208.685 (Baldwin 1982).

The Cabinet shall file a case progress report at least every six months with the local court appointed review board and the court. Ky. Rev. Stat. Ann. §208.710 (Baldwin 1982).

The local review board shall review each committed child every six months as to the past, current, future status of the child and placement as shown through the permanency plan, case record and case progress report and other information requested by the board; Cabinet efforts to locate and provide services to the natural parents, and to facilitate return home or find an alternative permanent placement also must be evaluated. Ky. Rev. Stat. Ann. §208.725 (Baldwin 1982).

The Cabinet may be asked to appear before the local board to update the board on the progress of placing a child in a permanent home. Ky. Rev. Stat. Ann. §208.730 (Baldwin 1982).

The board shall submit its recommendations and findings to the court within 10 days of the six month review. These must include whether there is a plan for permanence, whether it is progressing, and whether the current placement or plan is grossly inappropriate. Ky. Rev. Stat. Ann. §208.735 (Baldwin 1982).

Coverage

Involuntary commitments of children in foster care to the Cabinet for Human Resources. Ky. Rev. Stat. Ann. §§208.680, 208.700 (Baldwin 1982).

Procedural Safeguards

Report - The six month case progress report to be submitted to the court and review board shall include the length of time the child was committed to the department; the number, location, and date of each placement; services and assistance provided to or arranged for the parents since the last plan or progress report and results achieved, efforts, and progress of parents including number and dates of parental visits and extent, quality, and frequency of parent's communication with the child; barriers (familial and institutional) to returning the child home and services not currently available; evaluation of child's current placement and services provided; timetable for return home or other permanent placement; when return home is not recommended, a specific recommendation for a permanent placement including TPR; if continued foster care is recommended, why another permanent placement is not appropriate. Ky. Rev. Stat. Ann. §208.710 (Baldwin 1982).

Each local review board may request employees of the Cabinet or other agencies to appear when necessary to determine progress in placing the child in a permanent home. Ky. Rev. Stat. Ann. §208.730 (Baldwin 1982).

Upon completion of the six month review, the board shall send a notice that its review of the plan and progress report has become part of the court record to the parents, Cabinet, attorney for parent and child's GAL. Ky. Rev. Stat. Ann. §208.740 (Baldwin 1982).

The review boards shall have access to information and records of the department and the court and may obtain a court order to enforce this right. Ky. Rev. Stat. Ann. §208.715 (Baldwin 1982).

At the review the board must consider the past, current and future status of the child; department efforts to locate and provide services to the family; department efforts to facilitate the return of the child or find an alternate permanent placement if reunion is not feasible; any other problems or alternatives which should be explored in the child's best interests. The department must report to the board factors which suggest or negotiate against return or a particular permanent placement. Ky. Rev. Stat. Ann. §208.725 (Baldwin 1982).

Upon review of the child's case, the department, any agency, institution or individual responsible for the supervision, care or treatment of the child, may divulge and communicate information regarding the care of the child in foster care as the court may require in an effort to modify or terminate commitment. Ky. Rev. Stat. Ann. §208.205 (Baldwin 1982).

Scheduling

The Department shall submit a progress report every six months to the court and local review board. Ky. Rev. Stat. Ann. §208.710 (Baldwin 1982).

The local review board shall review each committed child every six months until commitment is terminated or disposition is final. Within 10 days of the six month review, the board must submit its findings and recommendations to the court. Ky. Rev. Stat. Ann. §208.725,.735 (Baldwin 1982).

Authority of Court or Review Body

Within 10 days of the six month review the board shall submit to the court its findings and recommendations including but not limited to whether there is a plan for permanency; whether the plan is progressing and whether the current placement or permanency plan is grossly inappropriate. Ky. Rev. Stat. Ann. §208.735 (Baldwin 1982).

Decision Required

Within 10 days of the six month review the board shall submit to the court its findings and recommendations including but not limited to whether there is a plan for permanency; whether the plan is progressing and whether the current placement or permanency plan is grossly inappropriate. Ky. Rev. Stat. Ann. §208.735 (Baldwin 1982).

At the review the board must consider the past, current and future status of the child; department efforts to locate and provide services to the family; department efforts to facilitate the return of the child or find an alternate permanent placement if reunion is not feasible; any other problems or alternatives which should be explored in the child's best interests. Ky. Rev. Stat. Ann. §208.725 (Baldwin 1982).

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Procedure

Any institution, agency or person to which a child is assigned shall, not less than every six months, submit a written report to the Judge regarding the whereabouts and condition of the child. La. Civ. Code Ann. art. 90.(C) (West 1982).

On its own motion or motion of the district attorney, child, or parents, the court may modify a judgement of disposition. A motion to modify may be denied without a contradictory hearing. A hearing is required to impose more restrictive conditions unless parties consent. On its own motion or oral or written motion of a probation officer, the court may modify a disposition judgement without a contradictory hearing if to impose a less restrictive disposition. La. Civ. Code Ann. art. 91.(A)(B)(C) (West 1982).

The Department of Health and Human Resources, shall, whenever it has been assigned custody by judicial order, file a written report to the court on the status of the child six months after the initial placement of the child and every 12 months thereafter. The court shall consider such reports and may hold hearings on the child's status. La. Rev. Stat. Ann. §13:1580.2 (West Supp. 1982).

When a termination action is brought respecting a child who has been abused or neglected and the evidentiary standard is not met, court must review case every six months thereafter to determine whether parental rehabilitation has occurred. La. Rev. Stat. Ann. §13:1603.b (West Supp. 1982).

Following a judgement of termination of parental rights, the court shall hold a hearing every six months or sooner until permanent placement is effected. La. Rev. Stat. Ann. §13:1606(a) (West Supp. 1982).

The court shall hold a review hearing if it has not received a report from the Department regarding efforts to effect placement within 90 days of a judgement of abandonment or execution of a voluntary surrender. La. Rev. Stat. Ann. §13:1606(c)(3) (West Supp. 1982).

Coverage

Involuntarily placed children; standard for termination not met. La. Rev. Stat. Ann. §13:1600 (1),(2),(7); (West Supp. 1982).

Cases where parental right termination actions have been brought. La. Rev. Stat. Ann. §13:1603(b) (West Supp. 1982).

Procedural Safeguards

Notice - A copy of the motion to modify must be served on the child, parent, probation officer, district attorney, and legal custodian of the child. The same form of service is required as is required in serving a petition. La. Civ. Code Ann. art. 92 (West 1982).

Counsel - A child is entitled to counsel in a hearing to determine continued custody. The child is entitled to counsel in any other proceeding. If the parents are financially unable to afford or fail to employ counsel, the court shall appoint counsel for the child. La. Civ. Code Ann. art. 95 (A)(1),(B),(C) (West 1982).

The child, with consent of the court and child's parent, may waive assistance of counsel if evidenced in writing signed by the child and parent or by a verbatim transcript. La. Civ. Code Ann. art. 96 (West 1982). But see State in Interest of Dronet, 417 So. 2d 1356 (La. Ct. App. 1982)(D.A. represents child and State).

After receiving a Department report on a child's status the court may hold a hearing on whether the child should stay in care or be returned home. La. Rev. Stat. Ann. §13:604(c)(2) (West Supp. 1982).

Any attorney appointed to represent the child's interests in the proceedings shall continue to represent the interests of the child in all subsequent review hearings until the child is permanently placed. La. Rev. Stat. Ann. §13:604(c)(2) (West Supp. 1982).

If the court has not received a report from the Department detailing efforts to effect placement within 90 days of a judgement of abandonment or execution of a voluntary surrender, the court shall appoint an attorney to represent the child to facilitate permanent placement and schedule a review hearing. La. Rev. Stat. Ann. §13:1606(c)(3) (West Supp. 1982).

Scheduling

The Department of Health and Human Resources shall file a written report to the court on the child's status in custody six months after placement and every 12 months thereafter. The court may hold a hearing. La. Rev. Stat. Ann. §13:1580 (West Supp. 1982). On its own motion, or motion of DA, child, or parent, the court may modify a disposition order. La. Civ. Code Ann. art. 91.(a) (West 1982).

A disposition judgement may be modified if the court finds that the condition and circumstances justify modification. La. Civ. Code Ann. art. 93. (West 1982).

When a termination action is brought respecting a child who has been abused or neglected and evidentiary standard is not met, court must review case every six months thereafter to determine whether parental rehabilitation has occurred. La. Rev. Stat. Ann. §13:1603.B (West Supp. 1982).

After termination of parental rights, the court shall hold a hearing every six months or sooner until permanent placement is effected. La. Rev. Stat. Ann. §13:603(c) (West Supp. 1982).

The court shall hold a review if it has not received a report from the Department re. efforts to effect permanent placement within 90 days of a judgement of abandonment or execution of a voluntary surrender. La. Rev. Stat. Ann. §13:1606(c)(3) (West Supp. 1982).

Authority of Court or Review Body

Whenever the court finds the allegations for termination of parental rights have not been proved, yet the child has been abused or neglected, it shall order:
(1) an appropriate child welfare agency to make a concerted effort to reunite parent or parents and child using any and all social services at its disposal; and
(2) set a date for review within six months and each six months thereafter to determine what progress has been made in rehabilitating the parent or parents so that they might be reunited with their child. La. Rev. Stat. Ann. §13:1603.B (West Supp. 1982).

Following termination of parental rights, the court shall hold a hearing every six months to assess the Department's efforts to effect a permanent placement. The court shall order the Department to take any lawful steps necessary to effectuate such placement. La. Rev. Stat. Ann. §13:1606(c) (West Supp. 1982).

Decision Required

A disposition judgement may be modified if the court finds that the condition and circumstances justify modification. La. Civ. Code Ann. art. 93. (West 1982).

After receiving a Department report on the status of a child in custody, the court may hold a hearing to determine whether the child should remain in the care and custody of the Department, should be returned to the parent, tutor, guardian, or relative, or should receive some alternative program of care, support, and supervision. La. Rev. Stat. Ann. §13:1580 (West Supp. 1982).

When the court finds that the child has been abused or neglected although the evidentiary standards for termination have not been met, it shall order:
(1) an appropriate child welfare agency to make a concerted effort to reunite parent or parents with child, using any and all social services at its disposal; and
(2) set a date for review within six months and each six months thereafter to determine what progress has been made in rehabilitating the parent or parents so that they might be reunited with their child. La. Rev. Stat. Ann. §13:1603.B (West Supp. 1982).

Following termination of parental rights, the court shall hold a hearing every six months to assess the Department's efforts to effect a permanent placement. The court shall order the Department to take any lawful steps necessary to effectuate such placement. La. Rev. Stat. Ann. §13:1606(c) (West Supp. 1982).

NEW DISPOSITIONAL HEARING STATUTE
EFFECTIVE JULY 1, 1984

Procedure

The court must conduct a dispositional review hearing at least once each 12 months after a child in need of care enters foster care, or earlier on request of a party. The court order following the hearing must include a determination whether the child should be returned home; placed for adoption, including whether a termination of parental rights proceedings should be initiated; continued in foster care or department custody for a specified period; or whether the child, because of the child's special needs or circumstances should be placed in custody of a relative or individual on a permanent basis or should continue in foster care on a permanent or long term basis. Special findings must be made to justify long term custody or if continued custody is expected to be temporary, a timetable must be specified for return home or another permanent placement. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

Coverage

Children in care pursuant to a child in need of care proceeding. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

Procedural Safeguards

Notice - The clerk of the court shall notify the department or agency responsible for care or placement of the child, parents, the mature child and other parties of interest of the time and place of the review. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

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Findings - When the court determines at the hearing that the child should be placed in the custody of a relative or individual or continued in foster care or custody of the department it shall include written findings why return home, termination of department custody or another permanent plan is not possible. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

Report - If the agency cannot meet the timetable for return home or another permanent plan, it must notify the court. The agency must file regular case progress reports with the court and the citizen's review board also must file its written observations and recommendations to the court. La. Rev. Stat. Ch. 34, Tit. 46, §§2421, 2427 (effective July 1984).

Evidence - The court must base its determination and finding at the review hearing on the competent evidence presented. The court may consider the case permanency plan, case progress report, and the observations and recommendations of the local citizen review board to the extent of their probative value. La. Rev. Stat. Ch. 34, Tit. 46, §§2421, 2427 (effective July 1984).

Scheduling

The court must conduct a dispositional review hearing at least once every 12 months. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

Authority of Court or Review Body

The court must determine whether the child should be returned home; placed for adoption, including whether a termination of parental rights proceeding should be instituted; continued in foster care for a specified period; or, because of the child's special need, placed in the permanent custody of an individual or relative or continued in long term foster care. If further temporary foster care is the alternative selected, the court must specify a projected timetable for return home or another permanent placement. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

The court may determine the adequacy and compliance with the case permanency plan and case progress report. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

In addition to other dispositional orders the court may require the department to develop a case permanency plan or progress report to be submitted to the court within 10 days, set a later court hearing, or direct additional review by the citizen review board. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

Decision Required

The court must determine whether the child should be returned home; placed for adoption, including whether a termination of parental rights proceeding should be instituted; continued in foster care for a specified period; or, because of the child's special need, placed in the permanent custody of an individual or relative or continued in long term foster care. If further temporary foster care is the alternative selected the court must specify a projected timetable for return home or another permanent placement. The court may determine the adequacy and compliance with the case permanency plan and case progress report. In addition to other dispositional orders the court may require the department to develop a case permanency plan or progress report to be submitted to the court within 10 days, set a later court hearing, or direct additional review by the citizen review board. La. Rev. Stat. Ch. 34, Tit. 46, §2427 (effective July 1984).

Procedure

After final protection order (disposition order) issued, court must review case at least once within 18 months of the original order, unless the child is adopted or emancipated. Me. Rev. Stat. Ann. tit. 22, §4038.1, .2 (Supp. 1982-1983).

Review within 18 months of dispositional order and every two years thereafter. Me. Rev. Sta. Ann. tit. 22, §4038.1 (Supp. 1982-1983).

Coverage

Involuntary placement cases. Me. Rev. Stat. Ann. tit. 22, §§4002.1, 4038.1 (Supp. 1982-1983).

Procedural Safeguards

Right to Notice - Notice shall be served on parents and custodians at least 10 days prior to dispositional hearing. Same requirement for review. Me. Rev. Stat. Ann. tit. 22, §§4038(3), 4033 (Supp. 1982-1983).

The court, in every child protection proceeding except a request for a preliminary protection order and petition for medical treatment shall appoint a guardian ad litem for the child. His reasonable costs and expenses shall be paid by the District Court. Me. Rev. Stat. Ann. tit. 22, §4005(1) (Supp. 1982-1983).

Parents are entitled to legal counsel. If indigent, court will pay reasonable costs of counsel. Me. Rev. Stat. Ann. tit. 22, §4005(2) (Supp. 1982-1983).

Rules - Rules of civil procedure apply. They allow cross-examination. Me. Rev. Stat. Ann. tit. 22, §4007(1) (Supp. 1982-1983).

Electronic Recording of Proceeding - Proceeding shall be recorded at request of any party. Transcripts available through civil rules. Me. Rev. Stat. Ann. tit. 22, §4007(1) (Supp. 1982-1983).

All parties have right to appeal rules of Civil Procedure. Appeal is to the Superior Court. Me. Rev. Stat. Ann. tit. 22, §4006 (Supp. 1982-1983).

Notice - Notice of judicial review shall be given in accordance with District Court rules. Notice shall be given to all parties to the initial proceeding and to the child's parent or custodian, except that notice shall not be given to a parent whose rights have been terminated. Me. Rev. Stat. Ann. tit. 22, §4038(3) (Supp. 1982-1983).

The court may hear evidence and make any further order, based on a preponderance of the evidence, that is authorized in the provision or initial disposition. Me. Rev. Stat. Ann. tit. 22, §4038(4) (Supp. 1982-1983).

Scheduling

After final protection order (disposition order) issued, court must review case at least once within 18 months of the original order unless child is adopted or emancipated. Me. Rev. Stat. Ann. tit. 22, §4038.1 (Supp. 1982-1983).

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The Department shall petition for judicial review and return of custody to his parents at the earliest appropriate time. Me. Rev. Stat. Ann. tit. 22, §4041(D) (Supp. 1982-1983).

Authority of Court or Review Body

The court may hear evidence and make any further order, based on a preponderance of the evidence, that is authorized by the disposition provisions. The alternatives for orders include: custody with parents; departmental supervision of the child and family in the child's home; ordering that the child, custodians, parents and other appropriate family members accept treatment or services to ameliorate the circumstances related to the jeopardy; emancipation of the child if the requirements of statute are met; removal of the child from child's custodian and granting custody to a non-custodial parent, other person or the Department; ordering payment by the parents of a reasonable amount of support for the child; other orders regarding specific conditions governing custody. Me. Rev. Stat. Ann. tit. 22, §§4036, 4038(3) (Supp. 1982-1983).

Decision Required

The court may make any further order, based on a preponderance of the evidence, that is authorized by the original disposition statute (see authority of court above). The court may consider events occurring since the original order and the effect of a change in custody on the child. Me. Rev. Stat. Ann. tit. 22, §4038(4) (Supp. 1982-1983).

Procedure

A foster care review board is appointed by the Governor in each county to review every 6 months the cases of children who have resided in public or private foster care under the jurisdiction of the Department of Social Services for more than 6 months to determine what efforts have been made to acquire permanent stable placement for these children to encourage their return home or adoption and to encourage establishment of permanent foster care or guardianship for those for whom return home or adoption is not possible. A report of the Board's recommendations are filed with the juvenile court and the Department of Social Services. Md. Ann. Code art. 88A, §119 (1975 & Supp. 1982).

In addition, the court must conduct a review hearing within 18 months of the child's original placement and within each 18 months thereafter to determine whether and under what circumstances the child's commitment to the local department of social services should continue. The court should consider return home, continuation in foster care for a specified period, adoption and long-term foster care. Rule 915d, Md. Juv. Ct. Rules.

Coverage

All children under 18 who have resided in public or private foster care under the jurisdiction of the Department of Social Services for a period of more than 6 months are covered by the foster care review board provision. Md. Ann. Code art. 88A, §119 (1975 & Supp. 1982).

Children committed to a local department of social services for placement outside the child's home are covered for judicial reviews. Rule 915, Md. Juv. Ct. Rules.

Procedural Safeguards

A party is entitled to assistance of counsel at every stage of any proceeding under this Subtitle. Md. Cts. & Jud. Proc. Code Ann. §3-821 (1975) (general provision).

At any time, during the pendency of any action where it appears that independent representation is needed to protect the rights of a child, the court may appoint an attorney to represent the child in that particular action, including those involving children in need of assistance. Md. Cts. & Jud. Proc. Code Ann. §3-834 (1975) (general provision).

Scheduling

Every 6 months, foster care review board shall review cases of children in foster care. Following each review the Board must submit a report to the juvenile court and department. Md. Ann. Code art. 88A, §119 (1975 & Supp. 1982).

Court review must be held within 18 months after the original placement and periodically thereafter at intervals not greater than 18 months. Rule 915d, Md. Juv. Ct. Rules.

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Authority of Court or Review Body

A written report to the court from the review board is required in each case. It must assess whether return home, continued out-of-home placement or initiation of proceedings for the termination of parental rights is in the child's best interest. Md. Ann. Code art. 88A, §119 (1975 & Supp. 1982).

If continued out-of-home placement is recommended, the board may state whether the present plan is appropriate to the child's needs. Md. Ann. Code art. 88A, §119 (1975 & Supp. 1982).

At court review the court must determine whether and under what circumstances the child's commitment to the local department of social services should continue. Rule 915d, Md. Juv. Ct. Rules.

Decision Required

For each child whose case is reviewed, a local board shall submit a written report to the juvenile court and to the Department of Social Services which may recommend that return of the child to child's parent or legal guardian is in the child's best interests, that continued placement outside the home is in the child's best interest or that initiation of proceedings to terminate parental rights is in the child's best interests. Md. Ann. Code art. 88A, §119 (1975 & Supp. 1982).

At the 18 month court review the court must determine whether and under what circumstances the child's commitment to the local department of social services should continue. Considerations include whether the child should be returned home, continued in foster care for a specified period, be placed for adoption, or be continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances. Rule 915d, Md. Juv. Ct. Rules.

Procedure

The department, parents, legal custodian or child's counsel may petition the court for review and redetermination of the current needs of the child, not more than once every six months. Mass. Ann. Laws ch. 119, §26 (3) (Michie/Law Co-op 1975).

Coverage

Involuntary placement cases (voluntarily placed children and children whose parental rights have been terminated are not covered). Mass. Ann. Laws ch. 119, §24 (Michie/Law Co-op 1982).

Procedural Safeguards

A child shall be informed of the right to counsel at all hearings, and if not able to retain counsel, the court shall appoint counsel for said child. Mass. Ann. Laws ch. 119, §29 (Michie/Law Supp. 1982).

The parent or guardian or custodian of such child shall be informed of the right to counsel at all hearings, and if financially unable to retain counsel, the court shall appoint counsel for said parent, guardian, or custodian. Mass. Ann. Laws ch. 119, §29 (Michie/Law Supp. 1982).

Scheduling

The department, parents, legal custodian, or child's counsel may petition the court for review and redetermination not more than once every six months. Mass. Ann. Laws ch. 119, §26 (3) (Michie/Law Supp. 1982).

Authority of Court

Upon its adjudication that the child is in need of care and protection, the court in Boston, Bristol, Springfield, Worcester may commit the child to the custody of the department until the child becomes eighteen years of age or until, in the opinion of the department, the object of the child's commitment has been accomplished, whichever occurs first; or make any other appropriate order with reference to the care and custody of the child as may be in the child's best interests, including but not limited to any one or more of the following: (1) It may permit the child to remain with the child's parents, guardian, or other custodian, subject to conditions and limitations which the court may prescribe including supervision as directed by the court for the care and protection of the child; (2) It may, subject to such conditions and limitations as it may prescribe, transfer temporary legal custody to any of the following: (i) any individual who, after study by a probation officer or other person or agency designated by the court, is found by the court to be qualified to give care to the child; (ii) any agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; (iii) the department of social services; (3) It may order appropriate physical care including medical or dental care.

In appropriate cases, the court shall order the parents or parent of said child to reimburse the commonwealth or other agency for care. The court must determine the needs of the child whose case has come before the court. Mass. Ann. Laws ch. 119, §26 (1), (2), (3) (Michie/Law Co-op 1975 and Supp. 1982) (initial disposition - general provision).

Decision Required

The court must determine the needs of the child whose case has come before the court. Mass. Ann. Laws ch. 119, §26 (Michie/Law Co-op 1975).

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Procedure

If a child remains in foster care in the temporary custody of the court, the court must rehear the case within one year [when the parent must show their efforts to re-establish a home for the child and show why the child should not be placed in the permanent custody of the court (why parental rights should not be terminated.)]* If child is not placed in permanent custody of the court, the case is to be reheard annually thereafter. Mich. Comp. Laws Ann. §712 A.19 (West 1983).

* Placing the burden of going forward and the burden of proof on parent was declared unconstitutional. In re LaFleure, 48 Mich. App. 377 (1973).

Coverage

Involuntary placement cases. (Review hearings are not required for voluntary foster placements, permanent court wards or permanent wards committed to the Department of Social Services or a private institution or agency). Mich. Comp. Laws Ann. §712 A.2. (b) (1), (2) (West 1983).

Procedural Safeguards

Counsel - In the event the child or his or her parents desire counsel but are unable to afford counsel, the court in its discretion may appoint counsel to represent the child. Mich. Comp. Laws Ann. §712 A.17 (West 1983) (general provision).

In every case filed under the child protection law, legal counsel shall be appointed to represent the child. Mich. Comp. Laws Ann. §722.630 (West 1983).

Counsel must be appointed for parents at hearings which may involve termination of their rights and the court may appoint counsel for parents at other hearings. Mich. Juv. Court Rule 6.3.

Hearing - The court may conduct the hearings in an informal manner and may adjourn the hearing from time to time. Mich. Comp. Laws Ann. §712 A.17, 17a (West 1983).

Record - A recording must be made of all hearings on the formal calendar. Mich. Juv. Ct. Rule 8.4.

The "showings" required by the statute shall be recorded stenographically at a hearing held by a judge or referee. Mich. Comp. Laws Ann. §712 A.19 (West 1983).

Notice - If termination of parental rights is to be considered at the hearing parents must be personally served with notice of the proceeding and be notified of their right to counsel and right to a jury trial and of the possibility that parental rights will be terminated. Mich. Comp. Laws Ann. §§712 A.19, 20, 712 A.13, 14, Mich. Juv. Ct. Rules 7.2 (B) (4).

Reports - At the annual disposition rehearing, the county juvenile agent shall submit reports based on investigations conducted by juvenile agent's office or by a probation officer or on information submitted by a suitable public or private family service or child caring agency approved by the court, regarding the situation of the child's family and close relative and the possibility of their re-establishing a home for the child. Mich. Comp. Laws Ann. §712 A.19 (West 1983).

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A disposition order directed to a parent or a person other than a child shall not be effectual and binding unless opportunity for a hearing has been given pursuant to issuance of summons or notice and until copy of the order bearing the court's seal has been served on the parent or other person. Mich. Comp. Laws Ann. §712 A.18 (i) (West 1983).

Scheduling

If child remains in foster care in temporary court custody for 1 year, the court must rehear the case. Mich. Comp. Laws Ann. §712 A.19 (West 1983).

If the child continued in foster care, the case is to be reheard annually thereafter. Mich. Comp. Laws Ann. §712 A.19 (West 1983).

Authority of Court

At the annual rehearings the court may terminate parental rights if the statutory standards are met. The court may also continue temporary custody. Mich. Comp. Laws Ann. §712 A.19, 19a, 20 (West 1983).

Decision Required

At the annual rehearings the court may terminate parental rights if the statutory standards are met. The court may also continue temporary custody. Mich. Comp. Laws Ann. §712 A.19a, 20 (West 1983).

Procedure

An order placing child in care may last a maximum of one year but may, on court's motion or motion of a party, be renewed, and after notice to the parties and a hearing, the court may make some other disposition of the case. Any person to whom legal custody is transferred shall report in writing to the court at periods the court directs. Minn. Stat. Ann. §260.191 (Subd. 2) (West 1982).

Coverage

Involuntary placement cases (children who are neglected, dependent, neglected and in foster care). Minn. Stat. Ann. §260.0156, 10 (Subd. 18) (West 1982).

Procedural Safeguards

Hearing, Notice - Order placing child in care may last a maximum of one year but may be extended on court's motion or motion of party after notice and a hearing. Any person with legal custody must report to the court at periods the court directs. Minn. Stat. Ann. §260.191 (Subd. 2) (West 1982).

Notice - Notice must include a copy of the petition or other document to be considered at the hearing and a statement of the time, place, purpose and possible consequences of the hearing; a statement of the right to counsel; and a statement that the hearing may still be conducted in the party's absence and that information or subsequent hearings may be obtained by the court; and additional information directed by the court. Minn. Rules for Juv. Ct., Rule 44.

Parties - Children 12 or older, parents or guardian and agency have the right to participate in the hearings. Children under 12 participate through their guardian ad litem and may personally participate on order of the court. Older children and parents may be excluded temporarily from the hearing when it is in the child's best interest to do so. Minn. Rules for Juv. Ct. Rule 39, 42.03.

The court may waive the presence of the minor in court at any stage of the proceedings when it is in the best interests of the minor to do so. In any proceeding, the court may temporarily excuse the presence of a parent or guardian of a minor from the hearing when it is in the best interests of the minor. The attorney or guardian ad litem, if any, had the right to continue to participate in proceedings during the absence of the minor, parent, or guardian. Minn. Stat. Ann. §260.155 (Subd. 5) (West 1982).

Evidence - The minor and minor's parents, guardian or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing. Minn. Stat. Ann. §260.155 (Subd. 6) (West 1982).

Counsel - Child and parents each have a right to representation by separate counsel. Any child, parent or guardian must be advised by the court, on the record, of their right to court-appointed counsel. Both child and parents are entitled to representation at public expense, but parents may be ordered to pay for their own and their child's counsel in whole or in part. The child's guardian ad litem is to be represented by the child's counsel unless child and guardian ad litem disagree. In that case, counsel represents the child and the guardian ad litem may be entitled to separate counsel. Minn. Rules for Juv. Ct., Rule 40. See also Minn. Stat. Ann. §260.155 (Subd. 2) (West. 1982).

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GAL - The court must appoint a guardian ad litem for the child when it appears the child has no parent or guardian or that they are unavailable, incompetent, hostile to or have interests in conflict with the child's. However, the court may determine not to appoint a guardian ad litem when the child has counsel and the court finds the interests of the child otherwise protected. Minn. Rules for Juv. Ct., Rule 41. See also Minn. Stat. Ann. §260.155 (Subd. 4) (West. 1982).

In appointing the guardian ad litem, the court shall not appoint the party, or any agent or employee thereof filing the petition. Minn. Stat. Ann. §260.155 (Subd. 4) (West 1982).

When an agency petitions for court review of foster care status of a voluntarily placed developmentally disabled child after 18 months, a GAL shall be appointed for the child. Minn. Stat. Ann. §257.071 (Subd. 4) (West 1984).

Scheduling

Order placing child in care may last a maximum of one year but may be extended on court's motion of a party after notice and a hearing. Minn. Stat. Ann. §260.191.2 (West 1984).

Authority of Court

Court may renew the order, or after notice to the parties and a hearing, make some other disposition of the case until the individual is no longer a minor. Minn. Stat. Ann. §260.191 (Subd. 2) (West 1982).

Decision Required

Court may renew the order, or after notice to the parties and a hearing, make some other disposition of the case until the individual is no longer a minor. Minn. Stat. Ann. §260.191 (Subd. 2) (West 1982).

CHILDREN IN RESIDENTIAL FACILITIES ON VOLUNTARY RELEASE

Procedure

Eighteen months after initial placement in residential facility pursuant to voluntary release, the agency must return the voluntary placed child to parents or file a court petition for a foster care status review. If the petition is dismissed, agency must petition court every two years to determine if placement is in best interests of child. Minn. Stat. Ann. §257.071 (Subd. 3) (West 1984).

The social service agency responsible for the placement of a child in a residential facility pursuant to a voluntary release by the parent may bring a petition to juvenile court to review the foster care status of the child. Minn. Stat. Ann. §260.131 (West 1982).

Coverage

Voluntary placement cases. Minn. Stat. Ann. §257.071 (Subd. 3) (West 1984).

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Procedural Safeguards

The petition for review of children in voluntary placement must be verified by a person with knowledge of the facts, which may be on information and belief. The petition must be drafted on the showing of reasonable grounds to support the petition and show the facts which bring the child under court jurisdiction and identifying information on the child, parents, child's spouse, and the child's custodian, guardian or relative if a parent cannot be found. Minn. Stat. Ann. §260.131 (1982).

The juvenile court rules cited above apply also in these cases. Minn. Rules for Juv. Ct., Rule 37.01.

Scheduling

Eighteen months after initial placement, agency must return the voluntarily placed child to parents or file a court petition for review of court status. If petition is dismissed, agency must petition court every two years to determine if placement is in best interests of child. Minn. Stat. Ann. §257.071 (Subd. 3) (West 1984).

Authority of Court

In the case of placement in a residential facility on voluntary release, upon finding that the child's placement is in his/her best interest, the court shall approve the voluntary placement arrangement and order the social service agency responsible for the placement to bring a petition pursuant to statute within two years of court review. Minn. Stat. Ann. §260.192 (West 1982).

Upon finding that child's needs are not being met, the court shall order the social service agency or the parent to take whatever action is necessary and feasible to meet the child's needs, including when appropriate, the provision by the social service agency of services to the parents which would enable the child to live at home, and shall order the case reviewed in one year. Minn. Stat. Ann. §260.192 (West 1982).

Upon finding that the child has been abandoned by child's parents emotionally or financially or that the developmentally disabled child does not require out of home care because of the handicapping condition, the court shall order the agency to file a petition for review of foster care status. Minn. Stat. Ann. §260.192 (West 1982).

Decision Required

See "Authority of Court".

CHILDREN WHOSE PARENTAL RIGHTS ARE TERMINATED

Procedure

If the ward is in foster care, the court shall, on its own motion or that of the guardian, conduct a dispositional hearing within 18 months of the foster care placement and every two years thereafter to determine the future status of the child including whether the child should be continued in foster care for a specified period, should be placed for adoption, or should because of the child's special needs or circumstances be continued in foster care on a permanent or long term basis. When the court has decided on the latter option, no further dispositional hearings are required. Minn. Stat. Ann. §260.242 (Subd. 2 (d)) (West Supp. 1984).

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Coverage

Wards, i.e., children post termination of parental rights and children of deceased parents. Minn. Stat. Ann. §260.242 (Subd. 2 (d)) (West Supp. 1984).

Procedural Safeguards

The juvenile court rules cited above apply in these cases. Minn. Rules for Juv. Ct., Rule 37.01.

Scheduling

Within 18 months of the foster care placement and every 2 years thereafter, unless the child is placed in foster care on a permanent or long term basis, in which case no further dispositional hearings are required. Minn. Stat. Ann. §260.242 (Subd. 2 (d)) (West Supp. 1984).

Authority of Court

To determine whether the child should be continued in foster care for a specified period, should be placed for adoption, or should because of the child's special needs or circumstances be continued in foster care on a permanent or long-term basis. Minn. Stat. Ann. §260.242, (Subd. 2 (d)) (West Supp. 1984).

Decision Required

See "Authority of Court".

Procedure

The state department of public welfare must conduct an annual review for each child under its custody within Mississippi, and for each neglected or abused child whose custody was changed by court order as a result of the adjudication. The review must be completed during the anniversary month for the child's entry into foster care and annually thereafter. Miss. Code Ann. §43-15-13 (Supp. 1982).

Each child's annual review plan shall be filed with the court. The court shall, where appropriate, initiate proceedings on its own motion in the interest of the child. Miss. Code Ann. §43-15-13 (Supp. 1982).

Upon motion of child, child's parents, guardian or custodian, the court may, in its discretion, conduct an informal hearing to review the disposition order and may modify the disposition order if it finds a material change of circumstances. Miss. Code Ann. §43-21-613(2)(3) (1972).

Unless the court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or agency shall be reviewed by the court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or public. Statute does not provide for a "hearing." Court may require written reports from custodian, parents or others. Miss. Code Ann. §43-21-613(2)(3) (1972).

Coverage

Involuntary placement cases. Miss. Code Ann. §43-21-105 (1972).

Procedural Safeguards

In conducting annual reviews, the court may require a written report, information or statements from the child's court counselor, parent, guardian or custodian, which includes but is not limited to an evaluation of the child's progress and recommendations for further supervision or treatment. Miss. Code Ann. §43-21-613 (1972).

Each child's annual review plan shall be made available to natural parents or foster parents upon court approval. Miss. Code Ann. §43-15-13(2) (Supp. 1982).

Right to Counsel - Each party shall have the right to be represented by counsel at all stages of the proceedings. If the party is a child, the child shall be represented by counsel at all critical stages. If indigent, the child shall have the right to have counsel appointed for him by the youth court. Miss. Code Ann. §43-21-201(1) (1972) (General Provisions).

Guardian Ad Litem - The youth court shall appoint a guardian ad litem in every case involving an abused or neglected child which results in a judicial proceeding; when a child has no parent, guardian or custodian; when the parent is a minor or a person of unsound mind; when the parent is indifferent to the interests of the child or their interests appear to conflict; or where the youth court finds appointment of a GAL to be in the child's best interests. In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been appointed guardian ad litem. The court may appoint either a suitable attorney or a suitable layman as guardian ad litem. Miss. Code Ann. §43-21-121(1)(e), (2), (3), (4) (1972) (General Provision).

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Opportunity to Present and Cross-Examine Witnesses - All parties to a youth court cause shall have the right to any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront, and examine the person who prepared or furnished data for the report; and to introduce evidence controverting the contents of the report. Miss. Code Ann. §43-21-203(9) (1972) (General Provision).

Mandatory Attendance - The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. Miss. Code Ann. §43-21-203(8) (1972) (General Provision).

Upon written motion of any party, the Youth Court Judge shall make written findings of fact and conclusions of law. Miss. Code Ann. §43-21-603(6) (Initial Disposition).

In all hearings except detention/shelter hearings a complete record of all evidence shall be taken by stenographic reporting. Miss Code Ann. §43-21-203 (1972) (General Provision).

Scheduling

Court which receives annual review plan shall, where appropriate, initiate proceedings on its own motion. Miss. Code Ann. §43-15-13(2) (Supp. 1982).

Upon motion of a child, child's guardian or custodian, the court may, in its discretion, conduct an informal hearing to review its disposition order. Miss. Code Ann. §43-21-613(2) (1972).

Unless the court jurisdiction has been terminated, all disposition orders for supervision, probation or placement shall be reviewed by the court at least annually. (No mention of annual "hearing") Miss. Code Ann. §43-21-613(3) (1972).

Authority of Court or Review Body

Upon receiving the child's annual review plan, in the interest of the child the court where appropriate, shall initiate proceedings on its own motion. Miss. Code Ann. §43-15-13(2) (Supp. 1982).

If the youth court on a motion finds a material change of circumstances relating to the disposition of the child and after annual review, may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered. Miss. Code Ann. §43-21-613(2) (1972).

In neglect and abuse cases, the disposition order may include any of the following alternatives giving precedence in the following sequence:
(a) release the child without further action;
(b) place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe;
(c) order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent/guardian to perform;
(d) order youth court personnel, the department of public welfare or child care agencies to assist the child and the child's parent, guardian, or custodian to secure social and medical services to provide supervision and care of the child;
(e) give legal custody of the child to any of the following but in no event to any state training school:

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(i) the department of public welfare for appropriate placement or,
(ii) any private or public organization, preferably community based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Miss. Code Ann. §43-21-609 (1972) (Initial Disposition).

In the Interest of T - 427 So. 2d 1382 (Miss. 1983) held that while this section does not explicitly provide as an alternative for ordering the filing of proceedings to terminate parental rights, the authority to do so is implicit from a consideration of the section as a whole.

If the youth court finds at the disposition hearing ... a neglected child or an abused child is also a child in need of special care, the youth court may, in its discretion, make any appropriate additional disposition designed for the treatment of the disability or infirmity, which may include a commitment, as a priority case, to any state institution providing care for that disability or infirmity. Miss. Code Ann. §43-21-611 (1972) (Initial Disposition).

Decision Required

In neglect and abuse cases, the disposition order may include any of the following alternatives giving precedence in the following sequence:
(a) release the child without further action;
(b) place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe;
(c) order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent/guardian to perform;
(d) order youth court personnel, the department of public welfare or child care agencies to assist the child and the child's parent, guardian, or custodian to secure social and medical services to provide supervision and care of the child;
(e) give legal custody of the child to any of the following but in no event to any state training school:
(i) the department of public welfare for appropriate placement or,
(ii) any private or public organization, preferably community based, able to assume the education, care and maintenance of the child, which has been found suitable by the court.

Miss. Code Ann. §43-21-609 (1972) (Initial Disposition).

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Procedure

When a parent or guardian or relative commits a child to the care of an authorized agency and the child has remained in care for a continuous 6 month period, the agency shall petition the juvenile court where the child is present to review the child's status. A written report on the child's status shall be presented to the court. The court shall then review the child's status and may hold a dispositional hearing to determine whether the child should continue in foster care, returned to the parent/guardian/relative, or whether proceedings should be initiated to terminate parental rights. Mo. Ann. Stat. §210.710 (Vernon Supp. 1983).

When a court has placed a child in the custody of an authorized agency or in foster care, every 6 months after placement, the foster family, group home agency, or child care institution with whom the child is placed shall file with the court a written status report. The court shall review the report and shall hold a dispositional hearing within 18 months of placement and annually thereafter to determine if the child should continue in foster care, be returned to a parent/guardian, or whether proceedings to terminate parental rights should be initiated. Mo. Ann. Stat. §210.720 (Vernon Supp. 1983).

For children continued in foster care, the court shall review the child's status whenever necessary or desirable but at least once every 6 months. Mo. Ann. Stat. §210.730 (Vernon Supp. 1983).

Coverage

Voluntary placement cases. Mo. Ann. Stat. §210.710 (Vernon Supp. 1983).

Involuntary placement cases. Mo. Ann. Stat. §210.720 (Vernon Supp. 1983).

Procedural Safeguards

Report/Hearing - A written status report is required at six months for a child in voluntary foster care. A hearing may be held in these cases. Mo. Ann. Stat. §210.710 (Vernon Supp. 1983). A written status report is also required for involuntary placement cases each six months, but in these cases the court must hold a dispositional hearing within eighteen months of initial placement and annually thereafter. Mo. Ann. Stat. §210.720 (Vernon Supp. 1983).

Scheduling

For children voluntarily placement, a written status report shall be presented to the court and an agency petition filed for court review after 6 months of placement. The court shall review the status of the child and may hold a dispositional hearing. Mo. Ann. Stat. §210.710 (Vernon Supp. 1983).

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For children placed by the court, a written status report shall be submitted to the court every 6 months and a dispositional hearing held within 18 months of placement and annually thereafter. Mo. Ann. Stat. §210.720 (Vernon Supp. 1983).

In the case of children continued in foster care, the court shall review the status of the child whenever it deems desireable but at least once every 6 months. Mo. Ann. Stat. §210.730 (Vernon Supp. 1983).

Authority of Court or Review Body

At the dispositional hearing, the Court must determine whether to continue child in foster care, return child to parents, guardian, or relative, or whether to institute a termination of parental rights proceeding to free child for adoption. Mo. Ann. Stat. §§210.710,.720 (Vernon Supp. 1983).

Decision Required

(See "Authority of Court.")

Procedure

Court-appointed Foster Care Review Committee must submit written report of findings and recommendations to court and agency within 30 days of review, for further action by the youth court or the department. Mont. Code. Ann. §41-3-1115 (3) (1983)

At least one Foster Care Review Committee shall be appointed by the youth court Judge in consultation with the Department in every judicial district. The committee shall be composed of 5-7 members including a representative of the Department of Social and Rehabilitative Services, Youth Court, local school district and someone knowledgeable in the needs of children in foster care placement and who is not employed by the Youth Court or Department; if there is one, the foster parent of the child whose care is under review. Mont. Code. Ann. §41-3-1115 (1) (1983)

The committee shall conduct a review of the foster care status of the child no later than the 12 month anniversary date of the child's placement citation. The person responsible for the placement should not be a member of the committee when the committee reviews the child's placement. Mont. Admin. R. §46.5.508 (6) (1982).

Except for initial reviews there shall be a review every 6 months after a child has been in care for more than 6 months. Mont. Admin. R. §46.5.508 (1982).

Coverage

Any child placed in a licensed family foster home, child care agency, group home or treatment facility if placed under supervision of the Department or placed by the Department or the Department pays for the child's care (includes children in voluntary placement). Mont. Code Ann. §43.1115 (1983).

Procedural Safeguards

The following people may participate in the foster care review meetings: committee members; placing worker and/or supervisor; foster care provider, parents and child/youth (if appropriate) may attend if they wish; child's guardian ad litem; other people as appropriate. Mont. Admin. R. §46.5.510 (2) (1982).

Any information on individual cases heard and meetings of the committee are confidential and subject to the Department's confidentiality requirements. Mont. Code Ann. §41-3-1115 (5) (1983).

The foster care committee is subject to the call of the youth court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the youth court. Mont. Code Ann. §41-3-1115 (6) (1981).

Ten days prior to the meeting date, the Foster Care Review Committee shall be provided with written information by the placing agency necessary to answer all questions to be considered by the Committee. Supporting documentation which must be available for review at the committee meeting shall include current social information; placement history; treatment plan; description of activities and observations of workers; court orders; available psychological information regarding the child/family; placement worker's recommendation for continued placement or return to the family. Mont. Admin. R. §46.5.509 (2) (1982).

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Scheduling

Foster Care Review Committee must submit written report of findings and recommendations to court and the Department within 30 days of review, for further action by the youth court or the Department. Mont. Code Ann. §41-3-1115 (1983).

Except for initial reviews, there shall be a foster care committee review every 6 months for a child in foster care more than 6 months. Mont. Admin. R. §46.5.508 (1982).

Authority of Court

The committee, after reviewing the information provided, shall submit a written report to the Judge and the department summarizing their findings and recommendations for further action of the court or the Department within 30 days of the review date. Mont. Code. Ann. §41-3-1115 (3) (1983).

Foster care review and the report must specifically address the following: (a) Are the child, parents, foster parents receiving appropriate services designed to get the child home? (b) Have reasonable efforts been made by the placing agency to return the child to his/her home? (c) Can the child return home? If not, why not? What efforts must be made by the parents and agency before the child can return home? (d) In the interim, is this placement the least restrictive, most appropriate and as close as possible to the parents' home so as to facilitate visitation? (e) Does the treatment plan need to be modified? (f) By what date may it be expected that the child will return home, be placed for adoption or other alternative permanent placement situation (i.e., permanent foster care or guardianship)? (g) To what extent have the parents visited the child, what attempts has the placing worker made to facilitate visitation, and any reason why visitation has not happened?

The report to the court must also include recommendations and reasons for continuation or discontinuation of foster care and the treatment needs of the child. Mont. Admin. R. §46.5.509 (1) (1982).

Decison Required

The report of the review committee shall include answers to the questions considered in the review. These are: (1) Are the child, parents, foster parents receiving appropriate services designed to get the child home? (2) Have reasonable efforts been made by the placing agency to return the child to his or her home? (3) Can the child return home? If not, why not? What efforts must be made by the parents and agency before the child can return home? (4) In the interim, is this placement the least restrictive, most appropriate and as close as possible to the parents' home so as to fulfill visitation? (5) Does the child's treatment plan need to be modified? (6) By what date may it be expected that the child will return home, be placed for adoption or other alternative permanent placement situation (i.e., permanent foster care or guardianship)? (7) To what extent have the parents visited the child, what attempts have the placing worker made to facilitate visitation, and any reason visitation has not happened? In addition to answering these questions the review committee must provide recommendations and reasons for the continuation of discontinuation of foster care and or the treatment needs of the child. Mont. Admin. R. §46.5.509, 510 (1) (1982).

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Procedure

The court shall review its dispositional order after the child has been in foster care for one year, then every six months thereafter. Neb. Rev. Stat. §43-1313 (Supp. 1982).

Coverage

Involuntary Placement. Neb. Rev. Stat. §43-1301(4) (Supp. 1982).

Voluntary Placement. Neb. Rev. Stat. §43-1301(5) (Supp. 1982).

Procedural Safeguards

Notice and Right to Participate - The court shall give notice of the court review and the right of participation in all court reviews by certified mail no later than fourteen days before the court review. Such notice shall be provided to:
(1) the person charged with the care of such child;
(2) the child's parents or guardian, unless the parental rights of the parents have been terminated by court action;
(3) the foster child, if age fourteen or over;
(4) the foster parent(s); and
(5) the guardian ad litem of the foster child. Neb. Rev. Stat. §43-1314 (Supp. 1982).

The court shall inform the child and his parents or guardian of the child's right to counsel at the county's expense if unable to afford one. Neb. Rev. Stat. §43-272 (Supp. 1982).

The court shall appoint a guardian ad litem for the child. The guardian must be an attorney unless there is a special reason for a particular lay person to serve. In this case the guardian is entitled to appointed counsel. The guardian may present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. Neb. Rev. Stat. §43-272, 272.01 (Supp. 1982) (General Provision).

Decisions may be appealed. Neb. Rev. Stat. §§24-541.01 et seq, 43-2126 (Supp. 1982).

Scheduling

The court shall review its dispositional order after the child has been in foster care one year and then every six months thereafter. Neb. Rev. Stat. §43-1313 (Supp. 1982).

Authority of Court or Review Body

On review of its dispositional order the court may reaffirm its order or direct another disposition of the child. Neb. Rev. Stat. §43-1313 (Supp. 1982).

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Decision Required

In its reviews of its dispositional order for a child in foster care more than one year, the court may reaffirm its order or may direct other disposition of the child. Neb. Rev. Stat. §43-1313 (Supp. 1982).

In reviewing the foster care status of a child and in determining its order for disposition, the court shall consider the following criteria, including, but not limited to:
(1) the goals of the foster care placement and the appropriateness of the foster care plan established pursuant to statute;
(2) the services which have been offered to reunite the family; and
(3) when the return of the child to his/her home is not likely, the efforts which have been made or should be made to provide for other methods of care. Neb. Rev. Stat. §43-1315 (Supp. 1982).

The court shall, when reviewing the foster care status of a child, determine whether the individual physical, psychological and sociological needs of the child are being met. Neb. Rev. Stat. §43-1316 (Supp. 1982).

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Procedure

Court must hold dispositional hearing no later than 18 months after initial semi-annual hearing, and at least annually thereafter. Dispositional hearing must determine whether the child should be returned to parents or relatives, continued in foster home, placed for adoption or legal guardianship or remain in foster care or other similar institution on a long term basis. Nev. Rev. Stat. §62.261 (3), (4) (1981).

Coverage

Involuntarily placed children. Nev. Rev. Stat. §62.040 (1) (1981).

Procedural Safeguards

An order directed to a parent or person, other than a child, shall not become effective: (1) Unless an opportunity for a hearing has been given to such parent or other person pursuant to summons or other notice, at which hearing such person may be represented by counsel, produce, examine, and cross-examine witnesses; (2) Until a copy of a summons or other notice has been served on such person personally or by registered or certified mail to such person's last known address, unless service has been waived in writing. Nev. Rev. Stat. §62.201 (1), (2) (1981) (general provision).

Right to Counsel - In neglect cases, the parents, guardian or custodian shall be informed of their right to be represented by counsel. Nev. Rev. Stat. §62.195 (2) (1981).

Child's Representative - After a petition is filed that a child is neglected, the court shall appoint a social worker, juvenile probation officer, officer of the court or volunteer guardian to represent and protect the best interests of the child. The court may not allow any payment for the services of a person so appointed. Nev. Rev. Stat. §62.196 (1981) (general provision).

Scheduling

Court must hold dispositional hearing no later than 18 months after initial semiannual hearing, and at least annually thereafter. Nev. Rev. Stat. §62.261 (3) (1981).

Authority of Court

Each dispositional hearing must be held by the court to determine whether: (a) The child should be returned to child's parents or other relatives; (b) The child's placement in the foster home or other similar institution should be continued; (c) The child should be placed for adoption or under a legal guardianship; or (d) The child should remain in the foster home or other similar institution on a long term basis. Nev. Rev. Stat. §62.261 (4) (1981).

Decision Required

(See "Authority of Court, above.)

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Procedure

The court shall review the status of all children out of parent's custody and under legal supervision at least annually. N.H. Rev. Stat. Ann. §169-C:24 (Supp. 1979).

To attain return of child, parents must demonstrate to the court: they are in compliance with the court order; the child would not be endangered and, return would be in the child's best interest. Upon showing the ability to provide proper parental care, it shall be presumed that return home is in the child's best interests. N.H. Rev. Stat. Ann. §169-C:23 (Supp. 1979).

Coverage

Involuntary placement cases, including consent orders, children under legal supervision and children not under parental custody (no statutory authority for review post-TPR). N.H. Rev. Stat. Ann. §169-C:24 (Supp. 1979).

Procedural Safeguards

Case Report - At least 14 days prior to the annual court review, the child placing agency social worker or child care agency in charge of providing services to the child and parents shall submit to the court a supplemental report indicating such services and shall make a dispositional recommendation. The social worker shall send copies of such report to all parties. N.H. Rev. Stat. Ann. §169-C:24 (Supp. 1979).

Right to Counsel - In any case of neglect or abuse, the court shall appoint an attorney to represent indigent parents and the child. N.H. Rev. Stat. Ann. §169-C:10 (Supp. 1979) (General).

Evidence - In any proceeding under the Child Protection Act the court is not bound by technical rules of evidence and may admit evidence it considers relevant and material. N.H. Rev. Stat. Ann. §169-C:12 (Supp. 1979).

Subpoena - Subpoenas for production of papers and attendance of witnesses may be issued. N.H. Rev. Stat. Ann. §169-C:11 (Supp. 1979) (General Provision).

Scheduling

Court shall review the status of all children out of parent's custody and under legal supervision at least once every year following the initial approval of the order or initial disposition hearing. N.H. Rev. Stat. Ann. §169-C:24 (Supp. 1979).

Authority of Court or Review Body

(None specified)

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Decision Required

Before a child in foster care is returned to the custody of its parents, the parents shall demonstrate to the court that: they are in compliance with the outstanding dispositional court order; the child will not be endangered in the manner adjudicated on the initial petition, if returned home; and, that return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that the return of custody is in the child's best interests. N.H. Rev. Stat. Ann. §169-C:23 (Supp. 1979).

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NEW JERSEY

REVIEW BY REVIEW BOARD AND COURT

Procedure

Each county judge shall appoint at least one child placement review board, consisting of 5 members, as an arm of the court to review all voluntary and court-ordered placement cases every 12 months to determine if such placement serves the best interest of the child. N.J. Rev. Stat. §30:4C-57; §30:4C-58 (1977).

The Review Board shall submit a written report to the juvenile and domestic relations court and division within 10 days after the completed review. N.J. Rev. Stat. §30:4C-60 (1977).

Upon review of the board's report, the court shall issue an order concerning the child's placement which best serves the child's interest. The court may hold a summary hearing when conflicting statements of material fact cannot be resolved, a party so requests, or the interests of justice so require. N.J. Rev. Stat. §30:4C-61 (1977).

Coverage

Voluntary placements (i.e., all placements by Division of Youth and Family Services). N.J. Rev. Stat. §30:4C-52, 53 (amended 1978).

Court ordered placements. N.J. Rev. Stat. §9:6-8.54 (1977).

Procedural Safeguards

Right to Counsel - The court shall advise the parent or guardian of his right to retain counsel. The court shall advise the respondent that if he is indigent, he may apply for an attorney through the Department of the Public Advocate. N.J. Rev. Stat. §§9:6-8.21 (e); 9:6-8.43 (a) (amended 1979) (general provision).

Law Guardian - Any minor who is the subject of a child abuse or neglect proceeding must be represented by a law guardian to help protect his interests and to help him express his wishes to the court. The juvenile and domestic relations court, on its own motion, will make appointment of law guardians. N.J. Rev. Stat. §§9:6-8.23 (a); 9:6-8.43 (1977) (general provision).

Review board procedure, report - Each review board shall provide written notice of the date, time and place of each review at least 15 days in advance of the division, child, the parents or legal guardian and any other person, the agency, including the temporary caretaker who has an interest in or information relating to the child's welfare. Each person can submit written material to the board. The board shall conduct a review and make recommendations based upon the written materials; provided that the board may afford any party or person an opportunity to appear if it will assist the Board's review. Within 10 days after completion of the review, the board shall submit a written report to the court and agency with a finding as to whether return home, continued out-of-home placement or initiation of termination of parental rights proceedings is in the child's best interests. If continued placement is recommended, the report must state whether the placement plan is appropriate to the child's needs. N.J. Rev. Stat. §30:4C-59, 60 (1977).

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In reviewing the Review Board's report, the court may request any written or oral information submitted to the board. The court shall make a determination based on the Review Board report and any other information before the Court; however, the court may schedule a summary hearing if the court has conflicting statements of material fact which cannot be resolved without a hearing, a party entitled to participate in the proceeding requests a hearing, or the interests of justice requires a hearing. N.J. Rev. Stat. §30:4C-61 (1977).

A party entitled to participate in the review board proceedings may request a hearing before a judge. At least 30 days notice of the hearing including dispositional alternatives shall be provided to the division, child, parent, legal guardian, all having the right to participate in the proceeding. The court may request additional information from any person or agency, including the temporary caretaker. N.J. Rev. Stat. §30:4C-61 (1977).

Scheduling - Review board shall review the cases of children placed out of their homes within 45 days of voluntary or court-ordered placement and at least annually thereafter and report to the court. N.J. Rev. Stat. §30:4C-58 (1977).

Upon receipt of review board report, at least annually, the court shall issue an order concerning the child's return home, placement, or initiation of termination of parental rights proceedings. N.J. Rev. Stat. §30:4C-61 (1977).

Authority of Court or Court Appointed Body - Review Board shall consider and evaluate such matters as: appropriateness of goals and objectives of placement plan and services provided to the child, parents, or legal guardian and temporary guardian, or caretaker; whether the child has siblings placed outside the home; whether the child's wishes were considered regarding placement and development of the plan; whether the division, parents or legal guardian and temporary caretaker are fulfilling their responsibilities according to the plan; whether the parents or legal guardian have been encouraged to participate in regular visitation with the child; whether there are obstacles which hinder or prevent attainment of plan objectives and goal; and circumstances surrounding the placement. N.J. Rev. Stat. §30:4C-58 (amended 1978).

The review board report shall offer one of the following findings stating the specific reasons: (a) the child's best interests would be served by return to the parent or legal guardian; (b) continued placement and the placement plan is appropriate to the child's needs; (c) continued placement but plan is not appropriate to child's needs; (d) termination of parental rights should be initiated. N.J. Rev. Stat. §30:4C-60 (1977).

Upon reviewing the board's report, the court shall issue an order which best serves the child's interest. The court shall order return to the parent/legal guardian; continued placement in accordance with the current plan or a new plan to be developed by the division and approved by the court or continued placement recommending that the Division initiate termination of parental rights proceedings. N.J. Rev. Stat. §30:4C-61 (amended 1978).

Decision Required

See "Authority of Court or Court Appointed Body".

HEARING ON EXTENSION OF FOSTER CARE

Procedure

Court ordered placement may be for a maximum of 18 months after which court must hold hearing to extend order and may, upon hearing, make successive extensions of one year each. N.J. Rev. Stat. §9:6-8:54 (b) (1977).

Coverage

Court ordered placements. N.J. Rev. Stat. §§9:6-8:54 (a); 9:6-8.27 (1977).

Voluntary placements. N.J. Rev. Stat. §30:4C-53 (amended 1978).

Procedural Safeguards

No specific safeguards are provided for this hearing.

Scheduling

Placement may be for a maximum of 18 months after which court must hold hearing to extend order and may, upon hearing, make successive extensions of one year each. N.J. Rev. Stat. §9:6-8:54 (b) (1977).

Authority of Court

Placement may be for a maximum of 18 months after which court may, upon a hearing, in its discretion, make successive extensions of 1 year each. N.J. Rev. Stat. §9:6-8.54 (b) (1977).

The court on its own motion may, at the conclusion of any period of placement, hold a hearing concerning the need for continuing placement. N.J. Rev. Stat. §9:6-8.54 (b) (1977).

Decision Required

See "Authority of Court".

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Procedure

Within 6 months of any original disposition or continuation order, the human services department shall petition the court for review of disposition by the court or court appointed special master or referee. N.M. Stat. Ann. §32-1-38.1 (A) (Supp. 1982).

At the hearing, the human services department shall show it made reasonable efforts to comply with the court ordered treatment plan and shall present a treatment plan for any proposed extension of the dispositional order. The parent, guardian or custodian shall show that efforts made to comply with the court ordered treatment plan and to maintain contact with the child were diligent and made in good faith given the parent's, guardian's, or custodian's circumstances and ability. N.M. Stat. Ann. §32-1-38.1 (C) (Supp. 1982).

At all dispositional review hearings, the human services department shall, in cases where a child has been in foster care 18 months or longer, recommend either return to parents or termination of parental rights or show cause why continued foster care is in the child's best interests. N.M. Stat. Ann. §32-1-38.2 (Supp. 1982).

Coverage

Involuntary placement cases. N.M. Stat. Ann. §32-1-38 (Supp. 1982) (includes post-termination cases).

Voluntary placements are limited by statute to 360 days consecutively or in any 2 consecutive calendar years. N.M. Stat. Ann. §32-1-50 (1984).

Procedural Safeguards

Notice - The children's court attorney shall give 20 days written notice to all parties of the time, place and purpose of any judicial review hearing. N.M. Stat. Ann. §32-1-38.1 (B) (Supp. 1982).

Reports - 60 days before the 6 month court review the agency must submit a progress report to the local substitute care review board. The review board may report its findings and recommendations to the court prior to the 6 month court review. N.M. Stat. Ann. §32-1-38.1.A (Supp. 1982).

Evidence - The human services department and all persons given notice shall have the opportunity to present evidence and cross-examine witnesses. Rules of evidence shall not apply to review hearings. N.M. Stat. Ann. §32-1-38.1 (C), (D) (Supp. 1982).

All relevant and material evidence helpful in determining disposition issues may be presented, including oral and written reports even though not competent in adjudication hearings. N.M. Stat. Ann. §32-1-31 (1981) (general provision).

Any party may appeal from a judgment of the court to the court of appeals. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the children's court. The name of the child shall not appear upon the record on appeal. N.M. Stat. Ann. §32-1-39.A (1981) (general provision).

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Findings - At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law. N.M. Stat. Ann. §32-1-38.1 (B), (C) (Supp. 1982).

Right to Counsel - The public defender shall represent the child if after hearing, the parent is declared indigent. The parent, guardian, or custodian of the child shall be informed that they have the right to be represented by counsel and, upon request, be appointed counsel if indigent or if required by the interest of justice. N.M. Stat. Ann. §§32-1-27: B., J., K., L. (1981) (general provision).

Guardian Ad Litem - The court, at any stage of the proceeding, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if child's interests conflict with those of the parent, guardian or custodian. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

Scheduling

Within 6 months of the original disposition or continuation order, the department shall petition for a review by a judge or court appointed master/referee. N.M. Stat. Ann. §32-1-38.1 (A) (Supp. 1982).

Authority of Court

See "Decision Required".

Decision Required

At the conclusion of a review hearing, the court must make findings of fact and conclusions of law. N.M. Stat. Ann. §32-1-38.1 (E) (Supp. 1982).

Based on its findings, the court shall order the child to remain with child's parent subject to conditions and limitations; transfer legal custody to the human services department or qualified relative or individual; dismiss the action and return the child to child's parent without supervision; continue the child in legal custody of the human services department without any parental involvement in a treatment plan or terminate parental rights if the child has been in care 18 months or longer and cannot be returned home and there is no affirmative showing that adoption is remote because of the child's health or age. N.M. Stat. Ann. §32-1-38.1 (F) (Supp. 1982).

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Procedure

When child has been in foster care continuously for 18 months a petition for review with a copy of the placement instrument if any shall be filed by the agency charged with care and control of child (and may be by another supervisory agency or foster parent). On hearing the case the court must direct that foster care be continued, order the child's return home, or order the agency to initiate termination proceedings. The court may rehear the case of a child who remains in foster care sooner but must rehear it within 24 months. N.Y. Soc. Serv. Law §392.7 (McKinney Supp. 1982).

Coverage

Voluntary placements and cases in which parental rights have already been terminated. N.Y. Soc. Serv. Law §§384-a, 392.1 (b), 392.7 (d) (McKinney Supp. 1982).

Procedural Safeguards

Notice, Parties - Notice of the eighteen month review hearing, including a statement of the dispositional alternative of the court, shall be given and a copy of the petition shall be served upon the following, each of whom shall be a party entitled to participate in the proceeding:

(a) the authorized agency charged with the care and custody of such child; if that agency is not the petitioner;

(b) the authorized agency supervising foster care, if that agency is not the petitioner;

(c) the foster parent or parents in whose home the child has resided (and may still) for a continuous period of 18 months in foster care;

(d) the child's parent or guardian who transferred the care and custody of such child temporarily to an authorized agency;

(e) a person to whom a parent entrusted the care of the child or where such person transferred the care of the agency to an authorized agency;

(f) such other person as the court may, in its discretion direct.

Unless the court grants an order to show cause to be served in lieu of a notice of the hearing and the petition, service of notice of the review hearing and the petition shall be made at least 20 days before the date of said hearing in such manner and on such notice as the court may, in its discretion, prescribe. N.Y. Soc. Serv. Law §392 (4), (5) (McKinney Supp. 1982).

Any foster parent having cared for a child continuously for 18 months or more through an authorized agency, shall be permitted as a matter of right, as an interested party to intervene in any proceeding involving the custody of the child. Such intervention may be made anonymously or in the true name of said foster parents. N.Y. Soc. Serv. Law §383.3 (McKinney Supp. 1982).

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Petition - A petition to review foster care status shall be filed in the family court in the county in which the authorized agency charged with the care and custody or guardianship has its principal office; shall set forth the disposition sought and grounds; shall omit the name and address of the foster parent and biological parent for good cause where notice is to be given to a parent, guardian or relative. N.Y. Soc. Serv. Law §392.3 (McKinney Supp. 1982).

Attendance of Child - The court may, in its discretion, dispense with the attendance of the child at the hearing or may, with the consent of the parties, dispense with the hearing and make a determination based upon papers and affidavits submitted to the court. N.Y. Soc. Serv. Law §392.6 (McKinney Supp. 1982).

Findings - An order of disposition shall include the court's findings supporting its determination that such order is in accordance with the best interests of the child. If the court promulgates separate findings of fact or conclusions of law, or an opinion in lieu thereof, the order of disposition may incorporate such findings and conclusions, or opinions, by reference. N.Y. Soc. Serv. Law §392.7 (McKinney Supp. 1982).

Counsel - The parent, foster parent, or other person having physical or legal custody of the child has the right to the assistance of counsel and appointed counsel if indigent in proceedings under Soc. Serv. Law §392 and respondents in article 10 cases have the same right.

In addition, the judge may assign counsel to represent any adult if he determines it mandated by the NY or U.S. Constitution. N.Y. Fam. Ct. Act §262 (McKinney Supp. 1982) (general provision).

Law Guardian for Child - In proceedings regarding voluntarily placed foster children or involuntarily placed foster children, the family court shall appoint a law guardian to represent the minor if independent legal counsel is not available for the minor. N.Y. Fam. Ct. Act. §241.

Scheduling

When a child has been in foster care 18 months, a petition for review shall be filed by responsible agency (and may be by another supervisory agency or foster parent). The petition shall be filed in the family court at least 60 days prior to the end of the 18th month of continuous foster care. If a child is continued in foster care, the court may rehear the case as desirable or on petition of a party but must rehear it at least every 24 months. N.Y. Soc. Serv. Law §§392.2, .3 (d), .10 (McKinney Supp. 1982).

The court shall possess continuing jurisdiction and in cases where children are in foster care, shall rehear the matter whenever necessary or desirable or upon petition by any party entitled to notice but at least every 24 months. N.Y. Soc. Serv. Law §392.10 (McKinney Supp. 1982).

Authority of Court

At the 18 month rehearing, the court may make an order of protection setting forth reasonable conditions of behavior to be observed for a specific time by a person or agency who is before the court.

The court may make an order directing an authorized agency to undertake diligent efforts to encourage and strengthen the parental

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relationship when it finds such efforts will not be detrimental to the best interests of the child. Such order may include a specific plan of action for the authorized agency including, without limitation, requirements that such agency assist the parent obtaining adequate housing, employment, counselling, medical care or psychiatric treatment. N.Y. Soc. Serv. Law §392.8 - .11 (McKinney Supp. 1982).

Where the court has entered an order of disposition directing that the child be placed for adoption and the agency charged with the guardianship and custody of the child fails, prior to the rehearing to comply with such order the court at the time of such rehearing may, in the best interests of the child, enter an order committing the guardianship, and custody of the child to another authorized agency or may make any other order authorized pursuant to statute. N.Y. Soc. Serv. Law §392.11 (McKinney Supp. 1982).

After 18 months of placement, the court must, after hearing, enter a disposition in the best interest of the child, directing: that foster care be continued; that the child be returned to the parent, guardian, or relative; or that the agency file a petition for termination of parental rights if the court finds reasonable cause to believe that grounds for termination exist; or directing that a child be placed for adoption in the foster family where he resides/resided or with any other person. If the agency fails to initiate termination proceedings within 90 days, the court may authorize the foster parents to file. The Disposition order shall include the Court's findings supporting its determination that the order is in the best interest of the child. The order may incorporate by reference the separate findings of fact, conclusions of law or opinions by reference. N.Y. Soc. Serv. Law §392.7 (McKinney Supp. 1982).

The parent of a child removed or committed to an authorized agency shall not be entitled to custody except upon consent of court, public board, commission or official responsible for committment of such child, or in pursuance of court order or judicial officer determining that the child's interests will be promoted by return home and the parent is fit, competent and able to duly maintain support and educate such child. N.Y. Soc. Serv. Law §383.1 (McKinney Supp. 1982).

Pending final determination of a petition to extend placement, the court for good cause, may enter a temporary order extending the placement for no more than 30 days. Such temporary order may be renewed for good cause. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

Decison Required

In reviewing the foster care status of the child and in determining its order of disposition, the court shall consider, among other things:

(a) the appropriateness of the plan;

(b) what services have been offered to strengthen and re-unite the family;

(c) where return home of the child is not likely, what efforts have been or should be made to evaluate or plan for other modes of care; and

(d) any further efforts which have been or will be made to promote the best interests of the child. N.Y. Soc. Serv. Law §392.5, .8 - .11 (McKinney Supp. 1982).

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Procedure

Placements may be for an initial period of 18 months which may be successively extended in the court's discretion, for one year periods each. A petition to extend placement accompanied by supporting affidavits and reports shall be filed 60 days prior to expiration of the period. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

The place in which or the person with whom the child has been placed shall submit a report at the end of each period, making recommendations and giving appropriate supportive data. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

No placement shall be extended or continued except upon a hearing concerning the need for extended/continued placement. Such hearing shall be held upon the court's own motion or motion of the person, agency, or institution or foster parent, or parents where child is placed, the child or child's law guardian. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

Coverage

Involuntary placements (children placed pursuant to court orders in abuse/neglect cases). N.Y. Fam. Ct. Act. §1055 (McKinney Supp. 1982).

Procedural Safeguards

Notice - Notice of the court of hearing to extend placement and any supporting affidavits or reports, & copy of petition shall be served on the petitioner, person, agency, or institution with whom the child was placed, supervising placement agency, parent or other person responsible for the child's care, foster parents where child placed and upon the child or child's law guardian, each of whom shall be a party entitled to participate in the proceeding. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

Report, Hearing Required - The place or person with whom the child has been placed shall submit a report at the end of each placement period. No placement shall be extended/continued without a hearing. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

No fact finding hearing under article 10 of the Family Court Act can commence unless the court finds that the parent or other person legally responsible for the child's care is present at the hearing and has been served with a copy of the petition or every reasonable effort has been made to effect service. N.Y. Fam. Ct. Act. §1041 (McKinney Supp. 1982).

Counsel, Law Guardian - See provision under voluntary placements, above.

Scheduling - Placements may be for an initial 18 month period which may be extended by the court for one year periods. A petition to extend shall be filed 60 days prior to expiration of the period. N.Y. Jud. Law §1055 (b) (McKinney Supp. 1982).

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Authority of Court

In addition to or in lieu of a placement order or extension or continuation of placement, the court may order an agency or official to undertake the diligent efforts to encourage and strengthen the parental relationship when not detrimental to the child's best interests.

Such order may include a specific plan of action for such agency or official including requirement to assist parent or other person responsible for child's care to obtain adequate housing, medical care or psychiatric treatment. N.Y. Jud. Law §1055 (c) (McKinney 1976 & Supp. 1982).

The court may order an official or agency to institute proceedings to legally free the child for adoption and upon failure to so initiate within 30 days of the order, permit foster parents or parent where child is placed to initiate such proceeding unless the order has been modified or extended or the court has reasonable cause to believe the petition to legally free the child would not be approved. N.Y. Jud. Law §1055 (d) (McKinney 1976 & Supp. 1982.

Placements may not be made or continued beyond a child's 18th birthday without his consent and in no case, beyond 21st birthday. N.Y. Jud. Law §1055 (e) (McKinney 1976 & Supp. 1982).

Decision Required

In addition to or in lieu of a placement order or extension or continuation of placement, the court may order an agency or official to undertake the diligent efforts to encourage and strengthen the parental relationship when not detrimental to the child's best interests.

Such order may include a specific plan of action for such agency or official including requirement to assist parent or other person responsible for child's care to obtain adequate housing, employment, counseling, medical care or psychiatric treatment. N.Y. Jud. Law §1055 (c), (d), (e) (McKinney 1976 & Supp. 1982).

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Procedure

In any case where custody is removed from a parent, the judge shall conduct a review within 6 months of the order and at least annually thereafter and if at any time custody is restored to the parent, the court shall be relieved of the duty to hold periodic judicial review. N. C. Gen. Stat. §7A-657 (1979).

Coverage

Involuntary placement cases. N. C. Gen. Stat. §7A-523 (1979).

Procedural Safeguards

The Director shall make timely requests to the clerk to schedule periodic reviews. The clerk shall give 15 days notice of the review to the parent or person standing in loco parentis, the juvenile, if 12 years of age or more, the guardian, foster parent, custodian or agency with custody, the guardian ad litem, and any other person the court may specify indicating the court's impending review. N. C. Gen. Stat. §7A-657 (1979).

Right to Counsel - A juvenile has the right to be represented by counsel in all proceedings. All juveniles shall be conclusively presumed to be indigent. However, the court is specifically required to appoint counsel only in delinquency cases. When petitions allege abuse or neglect, or dependency, the parent has the right to counsel and to appointed counsel in case of indigency unless the parent waives the right. In no case may the judge appoint a county attorney, prosecutor or public defender. N. C. Gen. Stat. §§7A-584(a); 7A-587 (1979) (General Provision).

In reviewing custody orders the court shall consider information from the Department of Social Services, the court counselor, the custodian, guardian, parent or person standing in loco parentis, the foster parent, the GAL; and any public or private agency which will aid in the review. N.C. Gen. Stat. §7A-657 (1979).

When a petition alleges abuse or neglect, the judge shall appoint a GAL to represent the juvenile unless representation is otherwise provided. GAL duties shall be to make an investigation to determine facts, the needs of the child and available resources to meet those needs, to facilitate settlement of the issues when appropriate to explore options with the judge at the dispositional hearing and to promote and protect the juvenile's interest. When the appointed GAL is not an attorney, he may employ an attorney when authorized by the court or to request appointment of an attorney to appear on behalf of the juvenile and to assist the GAL perform necessary and appropriate legal services,...to present relevant facts at the adjudicatory hearing and to appeal when advisable from an adjudication or disposition order. N. C. Gen. Stat. §7A-586 (Supp. 1983) (General Provision).

Appeal - Any order modifying custodial rights may be appealed to the Court of Appeals. N. C. Gen. Stat. §7A-666 (1981).

The judge may order the Department of Social Services to the GAL to conduct follow-up investigations to insure proper execution of court orders and to report to the court when the juvenile's needs are not being met. The judge may grant the GAL authority to demand any informatin or reports even if confidential if the GAL believes them to be relevant. N. C. Gen. Stat. §7A-586 (Supp. 1983) (General Provision).

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Scheduling

The court shall conduct a review 6 months after initial placement and annually thereafter. The Director shall make a timely request to the clerk to schedule these reviews. N. C. Gen. Stat. §7A-657 (1979).

Authority of Court or Review Body

In any case where the judge removes custody from a parent or persons standing in loco parentis...the juvenile shall not be returned to the parent or persons standing in loco parentis unless the judge finds sufficient facts to show that the juvenile will receive proper care and supervision. N.C. Gen. Stat. §7A-657 (1979).

The judge, after making findings of fact, shall enter an order continuing the placement under review or providing a different placement as is deemed to be in the best interests of the juvenile. N. C. Gen. Stat. §7A-657 (1979).

Decision Required

(See "Authority of Court" above.)

In each case, the court shall consider: (1) services offered to reunite the family; (2) where return home is unlikely, efforts which have been made to evaluate or plan for other methods of care; (3) the goals of foster care placement and the appropriateness of the plan; (4) a new foster care plan, if continuation or care is sought, that addresses the role of the current foster parent in planning for the juvenile; (5) reports about placement and services offered to the juvenile and parent; (6) when and if termination of parental rights should be considered; and (7) any other criteria the court deems necessary. The judge, after making findings of fact, shall enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. N.C. Gen. Stat. §7A-657 (1979).

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Procedure

Upon its own motion or motion of party, the court may after a hearing, extend dispositional order which otherwise may not last more than 18 months for a child in foster care. The hearing must be held prior to the expiration of the existing order. With or without party application, the court may terminate a disposition or extension order if its purposes have been accomplished. N.D. Cent. Code §27-20-36 (Interim Supp. 1981).

For children under 10, the court must determine at the extension hearing whether the child is adoptable and whether termination of parental rights is warranted under the statute and is in the child's best interest. N. D. Cent. Code §27-20-36 (Interim Supp. 1981).

Coverage

Involuntary placement cases. N. D. Cent. Code §§27-20-02.5; 03.1(a),(b) (1974 and Interim Supp. 1981).

Procedural Safeguards

Notice - Reasonable notice of the hearing and opportunity to be heard must be given to the parties affected in order for the court to extend a disposition. N. D. Cent. Code §27-20-36.4b (Interim Supp. 1981).

If parental rights may be terminated at the extension hearing, the notice of the extension hearing must also inform parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing said child with a view to adoption. N. D. Cent. Code §27-20-36 (Interim Supp. 1981).

If a child is not adopted within 18 months after the date of an order of termination and a guardian or conservator of the child has not been appointed by the county court, the child shall be returned to the court for entry of further orders for the care, custody and control of the child. N. D. Cent. Code §27-20-47(2) (Interim Supp. 1981).

An order can be extended, if necessary to accomplish the purposes of the order. The extension cannot exceed 18 months for a child in foster care and 2 years for other children. N. D. Cent. Code §27-20-36.4 (Interim Supp. 1981).

Opportunity to Present and Question Witnesses - A party is entitled to the opportunity to introduce evidence and otherwise be heard in party's own behalf and to cross-examine adverse witnesses. N. D. Cent. Code §27-20-27.1 (1974) (general provision).

Record - The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. N. D. Cent. Code §27-20-24.4 (Interim Supp. 1981).

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Right to Counsel - Except as otherwise provided under this statute, a party is entitled to representation by legal counsel at all stages of any proceedings under this statute and, if as a needy person the party is unable to employ counsel, to have the court provide counsel. If a party appears without counsel, the court shall ascertain whether party knows of right thereto and to be provided with a counsel by the court if party is a needy person. The court may continue the proceeding to enable a party to attain counsel for an unrepresented needy person upon request. Counsel or guardian ad litem must be provided for a child not represented by parent. N. D. Cent. Code §27-20-26.1 (1974).

Scheduling

Upon its own motion or motion of party, the court may after a hearing, extend dispositional order which, otherwise, may not last more than 18 months for a child in foster care. Hearing must be held prior to the expiraton of the existing order. N.D. Cent. Code §27-20-36.4 (Interim Supp.).

The extension also may not exceed 18 months. If a child is not adopted within 18 months of termination of parental rights the case must be returned to court for further orders. The court may terminate or order with or without party application. N. D. Cent. Code §27-20-36.4 (Interim Supp. 1981).

Authority of Court or Review Body

The court may, at the extension hearing, extend a foster care order, terminate it, or, for children under 10, determine whether the child is adoptable and whether termination of parental rights is warranted under the statute and in the child's best interest. N. D. Cent. Code §27-20-36.5,.6,.7 (Interim Supp. 1981).

Decision Required

The court may terminate an order of disposition or extension prior to its expiration, if it appears to the court that the purposes of the order have been accomplished. N. D. Cent. Code §27-20-36.5,.6,.7 (Interim Supp. 1981).

An order of extension may be made if: the court finds that the extension is necessary to accomplish the purposes of the order extended and that the child is still "deprived" if that is basis for original placement (In interest of J. K. S., 321 NW2d 491). N. D. Cent. Code §27-20-36.4(a)-(d) (Interim Supp. 1981).

If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is removed from the custody of child's parent, guardian or other custodian without terminating parental rights, the court, before extending the duration of the order, must determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under the statute, and is in the best interest of the child. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under statute. N.D. Cent. Code §27-20-36.4(a)-(d)(Interim Supp. 1981).

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Procedure

An annual review conducted by the public or private agency having custody of a child shall be filed with the juvenile court or court appointed board within 60 days after placement and annually thereafter. The juvenile court may order a review to be done more frequently. Ohio Rev. Code Ann. §5103.151(A), (B) (Page 1981).

The review procedure used by any agency shall be examined and approved by the court (or a five member court review board approved by the court). The court or court appointed board shall review and evaluate the agency report within 90 days of filing the report and shall approve the report or order it revised. Ohio Rev. Code Ann. §5103.151(C) (Page 1981).

Coverage

Every child placed in the care or custody of a public or private organization, society, association, agency or individual certified to care for or place children under foster care provisions. Ohio Rev. Code Ann. §5103.151(A) (Page 1981).

Procedural Safeguards

A copy of the annual agency review report must be filed with the juvenile court. A copy of the report approved by the court must be sent to the department of public welfare. Ohio Rev. Code Ann. §5103.151(B), (C) (Page 1981).

The court may excuse the attendance of the child at the hearing. Ohio Rev. Code Ann. §2151.35 (Page Supp. 1981) (General Provision).

A record in juvenile court shall be made in all proceedings for permanent custody; shall be made upon request in other proceedings. Ohio Rev. Code Ann. §2151.35 (Page Supp. 1981) (General Provision).

No order of temporary or permanent custody shall be made unless summons explains possibility of that consequence and right to counsel. Ohio Rev. Code Ann. §2151.353(c) (Page Supp. 1981); Ohio Rev. Code Ann. §2151.414(A) (Page Supp. 1981).

A child, the child's parents, custodian, or other person standing in loco parentis is entitled to representation by legal counsel at all stages of the proceedings and if he/she is an indigent person, he/she is to have counsel provided. Ohio Rev. Code Ann. §2151.352 (Page 1976).

Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each. Ohio Rev. Code Ann. §2151.32 (Page 1976).

The parents, custodian, or guardian of a child taken into custody and their attorneys shall be entitled to visit the child at any reasonable time, be present at any hearing and be given reasonable notice of the hearing. Any report concerning the child used in the hearing shall for good cause be made available to any attorney representing the child and parent upon written request made prior to the hearing. Ohio Rev. Code Ann. §2151.352 (Page 1976) (General Provision).

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Scheduling

An annual review by the agency with custody of a child placed shall be filed with the court or court-appointed board within 60 days of placement and annually unless the court orders it more frequently. Ohio Rev. Code Ann. §5103.151(A) (Page 1981).

Authority of Court or Review Body

The juvenile court that receives the annual agency review upon determining that the custody or care arrangement is not in the best interest of the child may terminate the custody of an agency and place the child in the custody of another agency. Ohio Rev. Code Ann. §5103.152(E) (Page 1981).

Court or court-appointed review board may approve report or order it revised. Ohio Rev. Code Ann. §5103.151(c) (Page 1981).

Decision Required

The juvenile court that receives the annual agency review upon determining that the custody or care arrangement is not in the best interest of the child may terminate the custody of an agency and place the child in the custody of another agency. The court or court-appointed review board may approve the report or order it revised. Ohio Rev. Code Ann. §5103.151 (C), (E) (Page 1981).

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Procedure

No later than 18 months after placing a child in foster care and every 12 months thereafter, the court shall conduct a dispositional hearing to decide whether to return child home; continue child in foster care for specified period; terminate parental rights; or continue child in foster care on long-term basis as a permanent plan or with a goal of independent living because of exceptional circumstances. Okla. Stat. tit. 10, §1116 (B) (Supp. 1983).

Coverage

Involuntary placement cases. Okla. Stat. tit. 10, §1101 (Supp. 1983).

Procedural Safeguards

Hearing - The court must hold a dispositional "hearing" at 18 months and each 12 months thereafter. Okla. Stat. tit. 10, §1116 (B) (Supp. 1983).

Report - For each review hearing the Department shall cause a written report to be prepared by a qualified child welfare worker to include but not be limited to a summary of the physical, mental and emotional condition of the child; conditions of the foster home or institution where child is placed; parental efforts to correct conditions causing the deprived adjudication. The report shall specifically recommend with reasons whether parental rights should be terminated and the child placed for adoption, child should remain in the foster home/ institution or returned home. Okla. Stat. tit. 10, §1116.1 (B) (Supp. 1983).

Evidence - At the dispositional hearing, all evidence helpful in determining the proper disposition that best serves the interest of the child and the public, including oral and written reports, may be admitted in court even though not competent in the adjudicatory hearing. Okla. Stat. tit. 10, §1115 (a) (Supp. 1983).

Before making a disposition order, the court shall advise the district attorney, parents, guardian, custodian or responsible relative and their counsel of the factual contents and conclusions of reports prepared for the court and afford fair opportunity, if requested, to controvert them. Okla. Stat. tit. 10, §1115 (b) (Supp. 1983).

Warning - The court may not terminate the rights of a parent who has not been notified that the parental rights might be terminated. Okla. Stat. tit. 10, §1116 (C) (Supp. 1983).

Counsel - If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without financial means, counsel shall be appointed by the court if the child is being proceeded against as a deprived child, a child in need of supervision, or a child in need of treatment, or if termination of parental rights is a possible remedy, provided that the court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the parents, guardian, or other legal custodian. Where necessary to protect the interests of the child, the court shall appoint a separate attorney for the child regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel. Provided that in any case where the child is alleged to be deprived and the court has not otherwise appointed a person to be guardian ad litem, the district attorney shall be deemed to be guardian ad litem for the child and shall protect the interests of the child. Okla. Stat. tit. 10, §1109 (B) (Supp. 1983) (general provision).

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The attorney representing a child whose case is being reviewed may submit a report to the court for representation at the review hearing to assist the court in reviewing the placement or status of the child. The Department shall not deny to a child the right of access to counsel and shall facilitate such access. Okla. Stat. tit. 10, §1116.1 (D) (Supp. 1983).

Appeal - Any interested party aggrieved by an order or decree may appeal to the Supreme Court in the same manner as other appeals are taken to the Supreme Court of this state. Okla. Stat. tit. 10, §1123 (Supp. 1983).

Scheduling

No later than eighteen months after placing a child in foster care and every 12 months thereafter court shall conduct a dispositional hearing. Okla. Stat. tit. 10, §1116 (B) (Supp. 1983).

Authority of Court

(See "Decision Required")

Decision Required

The court shall conduct a dispositional hearing to consider whether the child should be returned to parents or other family members; the child should be continued in foster care for a specified period; the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship; or whether the child, because of exceptional circumstances should remain in foster care on a long term basis as a permanent plan or with a goal of independent living. Okla. Stat. tit. 10, §1116 (B) (Supp. 1983).

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Procedure

The agency with guardianship or custody over a child as a result of court order or termination or surrender of parental rights shall file a report with the court at the end of the initial six-month period and annually thereafter. On receiving the report the court may hold a hearing to review the child's condition and circumstances and to determine whether the court should continue jurisdiction over the child or order modification of the order. The court must hold a hearing if requested by the child, parents, child's attorney or agency or if parental rights have been surrendered or terminated and the child has not been placed for adoption. Or. Rev. Stat. §419.576 (1981).

Coverage

Children in the custody of the agency pursuant to court order; i.e., children within the neglect or dependency jurisdiction. Children post-termination or surrender of parental rights are included. Or. Rev. Stat. §§419.476, 419.576, 419.576(7) (1981).

Voluntarily placed children are not covered by a court review requirement. They are covered by an administrative review requirement. Or. Rev. Stat. §418.302 (1981).

Procedural Safeguards

Report - The report which must be filed with the court must cover a description of the problems necessitating placement; a description of the care and treatment provided for the child and of the placements for that child; a description of agency efforts to return the child home and assist the parents; a proposed treatment plan or proposed modification, including terms of visitation, and proposed efforts of child and parents; a proposed time table for the child's return home or other permanent placement or a justification for extended foster care. Or. Rev. Stat. §419.576 (1), (2) (1981).

A copy of the report shall be sent by the court to the parents (except those whose parental rights have been terminated). The court may delete information on the identity and location of foster parents before sending the report. Or. Rev. Stat. §419.576 (6) (1981).

Notice - The court must send parents (except those whose parental rights have been terminated) a copy of the report and notify them of a hearing or of their right to request a hearing to seek modification in the care or treatment of the child. Or. Rev. Stat. §419.576 (6) (1981).

Hearing - The court may hold a hearing in any case but must do so if parents' rights are terminated or surrendered but the child has not been placed for adoption or if requested to do so by the child, child's attorney, parents, or agency within 30 days of receipt of notice. Or. Rev. Stat. §419.576 (4) (1981).

If a hearing is held, the safeguards that follow are provided. Or. Rev. Stat. §419.576 (5) (1981).

The hearing will be informal. Or. Rev. Stat. §419.498 (1) (1981).

Counsel - The court must appoint and compensate counsel for the child if requested to do so by the child or the parent or guardian. The court may do so in any case. The court may order the parent to pay for the child's counsel if able to do so. If the parent is unable to do so the court must pay for the expenses of investigation. Or. Rev. Stat. §419.498 (2) (1981).

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Witnesses - Witnesses may be subpeonaed. Or. Rev. Stat. §419.498 (3) (1981).

Record - Stenographic notes of the hearing shall be taken only when required by the court. Or. Rev. Stat. §419.498 (4) (1981).

Evidence - Testimony, reports or other material relating to the child's mental, physical or social history and prognosis may be received by the court without regard to their compentency or relevancy under the rules of evidence. Or. Rev. Stat. §§419.576, 419.500 (2) (1981).

Findings of Fact - At the conclusion of the hearing if the decision is to continue the child in foster care the court must enter findings of fact stating why continued foster care is necessary rather than return home or prompt action to secure permanent placement and the expected timetable for return home or another permanent placement. Or. Rev. Stat. §419.576 (5) (1981).

Scheduling

Reports must be filed after the initial six months in court-ordered care and annually thereafter. The court may hold a hearing in any case following receipt of a report and must do so if parental rights have been surrendered or terminated and the child has not been placed for adoption or if requested to do so by the child, parent, agency or child's attorney. Or. Rev. Stat. §419.576 (2), (4) (1981).

Authority of the Court

To determine whether the court should continue jurisdiction over the child or order modifications in the care, placement and supervision of the child. Or. Rev. Stat. §419.576 (4) (1981).

(But cf. In the matter of L., 546 P.2d 153 (1976), in which the Court of Appeals indicated that the juvenile court is neither empowered to order specific treatment nor to compell an agency to expend monies it has determined are not available to it. Rather, the court can only render an alternative order requiring the agency to secure treatment for children or to certify to the court that it is without funding to do so, in which case the court may terminate agency custody of the child.)

Decision Required

If a hearing is held the court must determine whether to continue jurisdiction over the child or order modification in the care, placement and supervision of the child. If the child is continued in foster care the court must issue findings specifying why continued foster care is necessary rather than return home or prompt action to secure another permanent plan for the child and specifying the expected timetable for return home or other permanent placement. Or. Rev. Stat. §419.576 (4) (6) (1981).

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Procedure

In abuse cases the Court, upon petition of child's attorney, shall order the agency to establish or implement services, treatment or plans for a child in need of them. The Court shall also, on petition, consider altering the conditions or terminating the child's placement. Pa. Stat. Ann. tit. 11, §2223 (b) (Purdon Supp. 1982-1983).

Coverage

Involuntary placement cases. Pa. Stat. Ann. tit. 11, §2203 (Purdon Supp. 1982-1983).

Procedural Safeguards

The court, when a proceeding has been initiated arising out of child abuse, shall appoint a guardian ad litem for the child. The guardian ad litem shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian pursuant to this statute; the guardian ad litem shall be charged with the representation of the child's best interests at every stage of the proceeding and shall make further investigation necessary to ascertain the facts, interview witnesses, examine and cross-examine witnesses, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child. Pa. Stat. Ann. tit. 11, §2223 (a) (Purdon Supp. 1982-1983).

Scheduling

In abuse cases, the Court, upon petition of child's attorney, shall order agency to establish or implement services, treatment or plans for a child found in need of them. Court shall also, on petition, consider altering the conditions or terminating the child's placement. Pa. Stat. Ann. tit. 11, §2223 (b) (Purdon Supp. 1982-1983).

Authority of Court

In abuse cases, the Court, upon petition of child's attorney, shall have duty to order agency to establish or implement needed services, treatment or plans for a child. The Court shall also, on petition, consider altering the conditions or terminating the child's placement. Pa. Stat. Ann. tit. 11, §2223 (b) (Purdon Supp. 1982-1983).

Decision Required

In abuse cases, the Court, upon petition of child's attorney, shall order the agency to establish or implement needed services, treatment or plans for the child. The Court also shall, on petition, consider altering the conditions or terminating the child's placement. Pa. Stat. Ann. tit. 11, §2223 (b) (Purdon Supp. 1982-1983).

Procedure

Court may, at any time, for good cause shown, revoke or modify its decree assigning custody of a child to a public or private agency. R. I. Gen. Laws §14-1-34 (Supp. 1982).

Coverage

Involuntary placement cases. R. I. Gen. Laws §14-11-2(2) (Supp. 1982).

Procedural Safeguards

Any child who is alleged to be abused or neglected as a subject of a petition filed in family court under this chapter shall have a guardian ad litem and/or a court-appointed special advocate appointed by the court to represent the child, all in the discretion of the court. If the parent or other person responsible for the child's care is financially unable to engage counsel as determined by the court, the court may, at the request of such person, and in its discretion, appoint the public defender, or other counsel to represent such person...In every court proceeding under this chapter in which it is a party, the department shall be represented by its legal counsel. R. I. Gen. Laws §40-11-14 (Supp. 1982).

Department records may be disclosed when necessary to the Family Court including periodic reports regarding the care and treatment of children; provided that if a child is represented by a GAL or attorney, a copy of the Family Court Report shall be made available to the GAL or attorney prior to submission to the court. R. I. Gen. Laws §42-72-8(4) (Supp. 1982).

Scheduling

Court may, at any time for good cause shown, revoke or modify its decree giving custody of a child to an agency. R. I. Gen. Laws §14-1-34 (Supp. 1982).

Decision Required

Court may at any time, for good cause shown, revoke or modify its decree giving custody of a child to an agency. R.I. Gen. Laws §14-1-34 (Supp. 1982).

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Procedure

The status of child removed from home by court order must be reviewed by the Family Court upon petition brought by protective services agency within 12 months following the child's initial removal and every 12 months thereafter. The court may also schedule a review hearing upon its own motion or upon the motion of any party in interest, at any time prior to the 12 months. S.C. Code Ann. §20-7-766 (1984).

The agency may request a review based upon the pleadings without necessity of holding a hearing by submitting to the court affidavits from the natural parents, the child's legal counsel and guardian ad litem, the individual or agency with legal custody of the child if different, and the local advisory board for review of foster care showing that all are in agreement as to the recommended disposition. Upon conducting a review, the court may issue an order consistent with the pleadings and affidavits or may order all parties to appear for a full hearing. S.C. Code Ann. §20-7-766 (1984).

On review, the court must establish whether the child will be returned home or continued in foster care for a specified period or whether termination of parental rights or guardianship proceedings should be initiated or whether the child should remain in foster care on a long term basis. S.C. Code Ann. §20-7-766 (1984).

Coverage

Involuntary placement cases. S.C. Code Ann. §§20-7-736, -766 (1984).

The court's jurisdiction shall end when an order of adoption or guardianship has been granted. S.C. Code Ann. §20-7-766 (1984).

Procedural Safeguards

Petition, Notice - Petitions brought by the protective services agency must be filed with the court and served upon all parties at least 7 days prior to review hearing. S.C. Code Ann. §20-7-766 (1984).

Parties - A party in interest includes but is not limited to the child, the child's legal counsel and guardian ad litem, the natural parent, the individual or agency with legal custody of the child, the foster parent, or the local advisory board for review of foster care. S.C. Code Ann. §20-7-766 (1984).

Counsel - In all child abuse and neglect proceedings, children shall be appointed legal counsel and a guardian ad litem by the Family Court. Counsel for the child shall in no case be the same as counsel for the parent, guardian or other person subject to the proceeding or any governmental or social agency involved in the proceeding. Parents, guardians or other persons subject to any judicial proceeding shall be entitled to legal counsel. Those persons unable to afford legal representation shall be appointed counsel by the Family Court. S.C. Code Ann. §20-7-110 (1984).

Report - When the agency initiates the review it must attach to its petition a report covering the following: services offered to parent and child and progress on the treatment plan; whether current placement is appropriate; listing of obstacles to return home and services needed to overcome them; recommended disposition and timetable for permanency planning; and the foster care review board. (This agency report and the agency's reports to the foster care review board and for its own internal administrative reviews may be made on the same form.) S.C. Code Ann. §20-7-764 (1984).

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Scheduling

The status of a child removed from child's home by court order must be reviewed by the Family Court on a petition brought by the protective services agency within 12 months of the child's initial removal and every 12 months thereafter. S.C. Code Ann. §20-7-762 (1984).

At any time prior to the twelve months, the court may schedule a review hearing upon its own motion or upon the motion of any party in interest. S.C. Code Ann. §20-7-766 (1984).

Authority of Court

If conditions which required the initial intervention no longer exist, the court shall order termination of protective services, and the court's jurisdiction shall end. S.C. Code Ann. §20-7-762 (1984).

See "Decision Required".

Decision Required

Upon conducting a review, the court may issue an order consistent with the pleadings and affidavits (when review initiated by agency) or may order all parties to appear for a full hearing. The court may order the return of the child to child's home unless it finds by a preponderance of the evidence that the return would threaten the child with harm. If the child is returned home, court may order agency supervision not to exceed 12 months. Where the child is not returned home, the court shall establish on the record: (1) what services have been provided to or offered to the parents to facilitate reunion; (2) whether the parents are satisfied with the services offered; (3) the extent to which the parents have visited or supported the child, and any reasons why visitation or support has not occurred or has been infrequent; (4) whether the agency is satisfied with the cooperation given it by the parents; (5) whether the additional services are needed to enable the child to return to the parents, and if so, the court may order the agency to provide additional services; (6) whether return of the child can be expected, and if so, when; (7) whether the child is to remain in foster care for a specified period of time; (8) whether proceedings should be initiated for permanent guardianship, termination of parental rights, or adoption; or (9) whether the child should remain in foster care on a long term basis, and if so, the special circumstances that justify long-term placement. S.C. Code Ann. §20-7-766 (1984).

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Procedure

If the court places legal custody in the department of social services without an approved plan for long term foster care, the department shall conduct an administrative review every six months of the services provided to the child and the child's family and report its findings to the court. If the department at any time finds that further court action is necessary to terminate parental rights, to clarify the child's legal status, or is desired to implement a case service plan, the state's attorney, on request by the department, shall petition the court for a hearing as provided in §26-8-62 or §26-8-63. S.D. Codified Laws Ann. §26-8-35.1 (Supp. 1983).

At the hearing petitioned for, if the child has been in the legal custody of the department for eighteen months, the court must either terminate parental rights or return the child to the parents. S.D. Codified Laws Ann. §§26-8-35.1, 35.2 (Supp. 1983).

In addition, the court may, at any time order the child's custodian to make a report and may, upon the hearing on such report, change guardians or institutions or return the child home. S.D. Codified Laws Ann. §§26-8-51, 26-8-52 (Supp. 1983).

Coverage

Involuntary placement cases which are not in court approved long term foster care. S.D. Codified Laws Ann. §§26-8-6, 26-8-35 (1977 & Supp. 1983).

Procedural Safeguards

Hearing - A "hearing" is required on petition of the state's attorney if the child has been in foster care 18 or more months. No modification of an order or decree which deprives a parent of legal custody or makes any other change in legal custody without a hearing. S.D. Codified Laws Ann. §§26-8-35.1, 35.2; 26-8-61 (Supp. 1983).

Notice - Parent, guardian, foster parent must be served with summons or citation to appear. Personal service or publication must be effected no less than 5 days before the hearing. S.D. Codified Laws Ann. §26-8-13, -15 (Supp. 1983) (general provision, may apply).

Notice of Possible Return Home - No child shall be ordered returned home without first giving 10 days notice to the guardian, institution or association caring for the child unless they consent. S.D. Codified Laws Ann. §26-8-53 (Supp. 1983).

Discovery - Records of court proceedings are open to inspection by parents, guardian, attorneys or interested parties. S.D. Codified Laws Ann. §26-8-22.11, 32.1 (1977).

Witnesses - Compulsory process may be issued for attendance of defense witnesses. The court may authorize witness fees and reimbursement for travel expenses. S.D. Codified Laws Ann. §§26-8-32, 32.1 (1977) (general provision, may apply).

Evidence - Evidence at dispositional hearings is governed by S.D. Codified Laws Ann. §26-8-22.11 (1977) (general provision, may apply).

Admissibility of Reports - In adjudicatory hearings, social studies and reports and materials on the child's mental, physical and social history may be received and considered by the court provided that if the child or parent so requests at the adjudication, the preparer of the report or materials will be required to appear and be subject to direct and cross examination. S.D. Codified Laws Ann. §26-8-32.5 (1977) (general provision, may apply).

Record - Verbatim record is not required in hearings other than verbatim hearings unless ordered by the court. S.D. Codified Laws Ann. §26-8-32.4 (1977) (general provision, may apply).

Appeal - Appeal may be taken from a judgment, decree or order under the juvenile chapter. S.D. Codified Laws Ann. §26-8-58.1 (Supp. 1983). Court must inform unrepresented persons of right to appeal and right to a new trial. S.D. Codified Laws Ann. §26-8-22.11, .3 (Supp. 1983).

Right to Counsel - If the child or his parents, guardian, or other custodian requests an attorney and is without sufficient financial means, counsel shall be appointed by the court,. . .when the petition is for determination of whether the child is neglected or dependent, and the termination of parental rights is stated as a possible remedy in the summons, the court may appoint and fix compensation for counsel necessary to protect the interest of the child or other parties. S.D. Codified Laws Ann. §26-8-22.2 (1977) (general provision).

If the child and his parents, guardian, or other custodian were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial, and that if such motion is denied they have the right to appeal. S.D. Codified Laws Ann. §26-8-22.3 (1977) (general provision).

Scheduling

If the court places legal custody in the department of social services without an approved plan for long term foster care, the department shall conduct an administrative review every six months and report its finding to the court. S.D. Codified Laws Ann. §26-8-35.1 (Supp. 1983).

If the department at any time finds that further court action is necessary to terminate parental rights or to clarify the child's legal status, or is desired to implement a care service plan, the department shall petition the court for a hearing. S.D. Codified Laws Ann. §26-8-35.1 (Supp. 1983).

At the hearing petitioned for, if the child has been in the legal custody of the department for eighteen months, the court must either terminate parental rights or return the child to the parents. S.D. Codified Laws Ann. §§26-8-35.1, 35.2 (Supp. 1983).

Authority of Court

At the hearing on petition, at eighteen or more months, the court must either terminate parental rights or return the child home. (See "Decision Required".) S.D. Codified Laws Ann. §26-8-35.2 (Supp. 1983).

Decision Required

Following the hearing petitioned for, when a child has been in legal custody of the department of social services for 18 months and it appears that all reasonable efforts have been made to rehabilitate the family, that the conditions leading to removal still exist and there is little likelihood they will be remedied, the court shall affirmatively find that good cause for termination of parental rights exists and enter a termination order. If it does not find that good cause exists, it shall enter a decree returning legal custody to the parent. S.D. Codified Laws Ann. §26-8-35.2 (Supp. 1983).

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Whenever it appears that the child's home is a suitable place, the court may enter an order returning the child to the home. No child shall be taken away or kept away from its parents any longer than reasonably necessary to preserve the child's welfare and state interest. S.D. Codified Laws Ann. §26-8-53 (Supp. 1983).

The petition which is filed is a petition for modification of the order on the basis of changed circumstance or new evidence. S.D. Codified Laws Ann. §§26-8-35.1, 26-8-62, 26-8-63 (Supp. 1983).

Agency **may** petition for a hearing. If hearing is at 18 months or more, parental rights must be terminated or child must be returned home. S.D. Codified Laws Ann. §26-8-35.2 (Supp. 1983).

Procedure

A hearing must be held by a judge or referee within 18 months of the date of foster care placement for each child in foster care to determine the necessity of continued foster care placement, the extent of compliance of all parties with the terms of the foster care plan, the extent of progress in achieving the goal of the plan and to determine the future status of the child. Subsequent hearings of the same kind must be held every 18 months in all cases except those in which the court has approved a long-term foster care agreement and those in which parental rights have been surrendered or terminated. In cases in which parental rights have been surrendered or terminated, such a hearing is required at 36 month intervals. If a termination hearing, custody hearing or other hearing which addresses the same issues is held, that hearing will satisfy this requirement and an additional hearing need not be scheduled. Tenn. Code Ann. §37-1508 (1983).

Coverage

Each child in foster care. Tenn. Code Ann. §37-1508(a) (1983).

Procedural Safeguards

Hearing - A hearing is required to be held. Tenn. Code Ann. §37-1508 (1983).

Initial Disposition - All evidence helpful, including oral and written reports may be relied on by the court to the extent of its probative value in making its disposition. The parties and their counsel shall be afforded an opportunity to examine and controvert written reports and cross-examine individuals making the reports. Sources of confidential information need not be disclosed. Tenn. Code Ann. §§37-227(d), 37-1508 (1983).

Parental rights may not be terminated except pursuant to a petition for that specific purpose. Id.

Agency Report - In addition to submitting a plan to the court each agency must submit to the board or court each six months a report for each child in its foster care on the progress made in achieving the goals set out in the plan. A copy must be provided to parents at the same time. Tenn. Code. Ann. §37-1503 (1983).

Review Board Report - A copy of the review board report and recommendations must be provided to the parents. Tenn. Code Ann. §37-1505(c)(1) (1983).

Notice - The 18 month hearing provision does not have a specific notice provision. However, it seems likely that the 18 month hearing and the six month hearing due at the 18 month point would be combined. The provision covering the six month hearing requires notice to the parents and grants them the right to attend and participate in the review. Tenn. Code Ann. §37-1503(b) (1983).

Guardian Ad Litem - The court, at any stage of a proceeding, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if child has no parent, guardian or custodian appearing on child's behalf or when their interest conflict with child's or in any other case in which the interests of the child require a guardian. The court, in any proceeding resulting from a report of harm or an investigation report under statute, shall appoint a guardian ad litem for the child who was the subject of the report. A party to the proceeding or party's employee or his representative shall not be appointed. Tenn. Code Ann. §37-248 (1983) (general provision).

Scheduling

The "permanency planning" hearing must be held by a judge or referee within 18 months of the date of foster care placement. Subsequent 18 month hearings must be held in all cases except those in which the court has approved a long-term foster care agreement and those in which parental rights have been surrendered or terminated. In cases in which parental rights have been surrendered or terminated such a hearing is required at 36 month intervals. If a termination hearing, custody hearing or other hearing which addresses the same issues is held, that hearing will satisfy this requirement and no additional hearing need be scheduled. Tenn. Code Ann. §31-1503 (1983).

Authority of Court or Review Body

The juvenile court has authority to approve and/or modify the case plan. One element of the case is a goal for the plan, including return home, adoption, permanent foster care, placement with relatives or emancipation. At the 18 month hearing the court may issue such orders as are appropriate to enforce compliance with the plan if a party has not complied. In combination, it would appear that the court has authority at the 18 month hearing to select the child's future status and to order that steps be taken to establish it. Tenn. Code Ann. §§37-1502, 37-1508(b) (1983).

Decision Required

At the 18 month hearing the court is required to determine the necessity of continued foster care placement, the extent of compliance of all parties with the terms of the foster care plan, the extent of progress made in achieving the goal of the plan and the future status of the child. If parties have not complied the court may issue further orders. The court has authority to approve or modify the case plan and to issue orders with respect to compliance with it. Tenn. Code Ann. §§37-1502, 37-1508(b) (1983).

Procedure

The court shall hold a hearing to review the conservatorship appointment and placement of the child in foster home, group home or institutional care 5 1/2 to 7 months after the last hearing unless for good cause shown by any party, an earlier hearing is approved by the court. Tex. Fam. Code Ann. §18.01 (Vernon 1982).

Coverage

Involuntary placement cases. Tex. Fam. Code Ann. §§11.01(5), 1801(a) (Vernon 1982).

Voluntary placement cases. Tex. Fam. Code Ann. §18.02 (Vernon 1982).

Parental right termination cases. Tex. Fam. Code Ann. §18.01 (Vernon 1982).

Procedural Safeguards

The following persons are entitled to at least 10 days notice of a hearing to review a child placement and are enlisted to present evidence and be heard.

At the hearing: the Texas Department of Human Resources; the foster parent or director of the group home or institution where the child is residing; both parents; the managing conservator or guardian of the person of the child; and any other person or agency named by the court as having an interest in the welfare of the child. Tex. Fam. Code Ann. §18.03 (Vernon 1982).

The court in its discretion may dispense with the attendance of the child at a placement review hearing. Tex. Fam. Code Ann. §18.05 (Vernon 1982).

Mandatory Attendance - The court may compel the attendance of witnesses necessary for the proper disposition of the petition, including a representative of the agency who may be compelled to testify. Tex. Fam. Code Ann. §§11.14 (c); 18.05 (Vernon 1982) (general provision).

Order - At the conclusion of the hearing the court may order one of several alternatives. Tex. Fam. Code Ann. §18.06 (c) (Vernon 1982), see Authority of the Court.

Opportunity to Present and Question Witnesses - When information contained in a report, study, or examination is before the court, the person making the report study or examination is subject to both direct and cross examination as in civil cases generally. Tex. Fam. Code Ann. §11.14 (f) (Vernon 1982) (See also §18.03).

Report - The managing conservator must report to the court annually on the child's condition. Tex. Fam. Code Ann. §14.01 (d) (Vernon 1982).

In any suit where a social study is ordered, the court shall set a time and place for a hearing which must be held not more than 60 days after the date the study was ordered. . .for good cause the court may change the hearing date. Tex. Fam. Code Ann. §11.14(h) (Vernon 1982) (general provision).

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Record - A record shall be made as in civil cases generally unless waived by the parties with the counsel of the court. Tex. Fam. Code Ann. §11.14 (g) (Vernon 1982).

Guardian Ad Litem - In any suit to terminate parental rights, the court shall appoint a GAL to represent the child's interests unless the child is petitioner, an attorney ad litem has been appointed for the child, the court finds the interests of the child will be adequately represented by a party. In any other suit, the court may appoint a GAL if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit. Tex. Fam. Code Ann. §11.10 (a) (Vernon 1982) (general provision).

A guardian ad litem shall be appointed to represent any other person entitled to service if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation. Tex. Fam. Code Ann. §11.10 (b) (Vernon 1982) (general provision).

The court may appoint an attorney for any party in a case when necessary to protect the interests of the child. Tex. Fam. Code Ann. §11.10 (c) (Vernon 1982) (general provision).

In any suit brought by a government entity seeking termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child as soon as practicable to ensure adequate representation of the child's interest. An attorney must also be appointed to represent the interests of a parent who responds and opposes termination of parental rights. Tex. Fam. Code Ann. §11.10 (d) (Vernon 1982) (general provision).

Scheduling

Court must hold hearing to review foster care placement and conservatorship appointment every 5 1/2-7 months after last hearing in the case unless for good cause shown by one party, the court approves an earlier hearing. Tex. Fam. Code Ann. §18.01 (Vernon 1982).

Authority of Court

At the conclusion of a placement review hearing under this chapter, the court, in accordance with the best interest of the child, may order (1) that the foster care, group home care, or institutional care be continued; (2) that the child be returned to his or her parent or guardian; (3) if the child has been placed with the Texas Department of Human Resources under a voluntary agreement, that the department institute further proceedings to appoint the department as managing conservator or to terminate parental rights in order to provide permanent placement for the child or to make the child available for adoption; (4) if the parental rights of the child have already been terminated or the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department or authorized agency as managing conservator, that the department or authorized agency attempt to place the child for adoption; or (5) the Texas Department of Human Resources or authorized agency to provide services to ensure that every effort has been made to enable the parents to provide a family for their own children. Tex. Fam. Code Ann. §18.06 (Vernon 1982).

Decision Required

See "Authority of Court".

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Procedure

Orders vesting legal custody of a child in an agency are indeterminate but after two years the custodian must file a petition for a review hearing of the case. The court may terminate the order or, after notice and hearing, continue the order. Utah Code Ann. §78-3a-42 (1977).

The court has issued a general policy order under authority of Utah Code Ann. §28-32-10 (1977) requiring that this hearing be held every 18 months rather than every 2 years.

An order for placement of a child with an individual or agency shall include a date certain for court review. Utah Code Ann. §78-3a-42 (1977).

Coverage

Involuntary placement cases including those in which parental rights have been terminated. Utah Code Ann. §§78-3a-2 (17), (18); 78-3a-16 (2) (a); 78-32-48 (Supp. 1981).

Procedural Safeguards

Notice - To continue the foster care order the court must provide notice and a hearing. Utah Code Ann. §78-3a-42 (Supp. 1981).

Notice and a hearing shall be required in any case in which the effect of modifying or setting aside an order may be to deprive a parent of legal custody of the child or to make any other change in legal custody. Utah Code Ann. §78-3a-45 (Supp. 1981).

Counsel - Parents, guardians, the child's custodian, and the child, if old enough, shall be informed that they have the right to be represented by counsel of their own choice; and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court. The court may appoint counsel without such requests if it deems representation by counsel necessary to protect the interest of the child or of other parties. The county attorney shall represent the state in any proceedings in a child's case. Utah Code Ann. §78-3-a-35 (Supp. 1981) (general provision).

Conduct of Hearings - Hearings in children's cases will be held without a jury and in an informal manner. Utah Code Ann. §78-3-a-33 (1977).

Record - A verbatim record of the proceedings shall be taken, by a court stenographer or by means of a mechanical recording device, in all cases which might result in deprivation of custody. In all other cases a verbatim record shall also be made, unless dispensed with by the court. Utah Code Ann. §78-3a-35 (Supp. 1981) (general provision).

Written Finding or Order - The findings of the court and the reasons therefor shall be entered with the continuation order or with order denying continuation. Utah Code Ann. §78-3a-42 (1977).

Appeal - All final orders of juvenile court may be appealed. Utah Code Ann. §78-3a-51 (Supp. 1981).

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Scheduling

Two years after entry of a custody order, the agency or other custodian must file a petition for review hearing. The court may terminate the order or after notice and hearing continue the order. (The court has issued a general policy order under Utah Code Ann. §78-3a-10 requiring that this hearing be held at 18 month rather than 2 year intervals.) Utah Code Ann. §78-3a-42 (1977).

An order for placement of a child with an individual or agency shall include a date certain for court review. Utah Code Ann. §78-3a-42 (1977).

Authority of Court

Upon petition for a review hearing, the court may terminate the order or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the child and the public interest. Utah Code Ann. §78-3a-42 (1977).

Decision Required

Upon petition for a review hearing, the court may terminate the order or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the child and the public interest. Utah Code Ann. §78-3a-42 (1977).

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Procedure

An order transferring legal custody or guardianship shall be reviewed 1-1/2 years from date entered and each 1-1/2 years thereafter by court or an administrative body of 1 to 3 persons appointed or approved by court. Vt. Stat. Ann. tit. 33, §650 (a), (c) (Supp. 1982).

No member of the administrative body may be an employee of the Department. Any person to whom legal custody was transferred shall file a notice of review, report and recommendation. Vt. Stat. Ann. tit. 33, §658(c)(Supp. 1982).

The review must determine whether the child will be returned home, continued in custody for a specified period, continued in custody on a long-term basis, or considered for adoption or legal guardianship. Vt. Stat. Ann. tit. 33, §658(d) (Supp. 1982).

A determination by the administrative body that the order should not be changed is binding unless a party requests court review. A determination that the order must be changed must be submitted to the court as a recommendation. Vt. Stat. Ann. tit. 33, §658(e) (Supp. 1982).

Coverage

Involuntary placement cases. (Voluntary placements limited by law to one year) Vt. Stat. Ann. tit. 33, §§632(a)(12)(A), (B); 633(a) (1981).

Procedural Safeguards

Notice - Any person to whom legal custody or guardianship was transferred shall file a notice of review, a report and recommendation with the court, the state's attorney and all parties to the proceeding. Services shall be effected by mailing a copy to parties' last know address. Vt. Stat. Ann. tit. 33,§658(b) (Supp. 1982).

A hearing shall be held within 30 days of the filing of the Notice of Review. Vt. Stat. Ann. tit. 33, §658(b) (1981) .

The hearing shall be conducted as a hearing on a petition except that all evidence is helpful in determining the questions presented, including oral and written reports, may be admitted and relied upon to the extent of its probative value, even though not competent in a hearing on a petition. Vt. Stat. Ann. tit. 33, §658(c) (1981).

Each party to the proceeding is entitled to court-appointed counsel in the proceedings. Vt. Stat. Ann. tit. 33, §§647(c) (1981) (general provision re original petition).

The juvenile court, at any stage of a proceeding, on application of a party or on its own motion, shall appoint a guardian ad litem or counsel for a child who is a party to the proceeding, if he has no parent or guardian or custodian appearing on his behalf or their interests conflict with those of the child or in any other case where the court believes the interests of the child require such guardian or counsel. Vt. Stat. Ann. tit. 33, §653(1981).

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The person appointed under this section shall not be a party to that proceeding or an employee or representative of such party. Vt. Stat. Ann. tit. 33, §653 (1981) (general provision).

A hearing to review the disposition order shall be held in all respects as a hearing on a petition except that all evidence helpful in determining the issues, including oral and written reports may be admitted even though not competent in a hearing on the petition. Vt. Stat. Ann. tit. 33, §658(c) (Supp. 1982).

When an administrative body makes a decision that the order should not be changed it is binding unless a party after notice, seeks a review by the court. If the administrative body determines the order should be changed it must submit its recommendation to the court for consideration. The court may conduct review de novo if the determination on its own motion or motion of a party. The administrative body's determination must be sent to the parties and the court; parties have 10 days from receipt to object to the decision becoming binding by seeking de novo court review. Vt. Stat. Ann. tit. 33, §658(e) (Supp. 1982).

Scheduling

Order transferring custody shall be reviewed 1-1/2 years from date entered and each 1-1/2 years thereafter by court or administrative body appointed or approved by the court. Custodian must file a notice of review. Vt. Stat. Ann. tit. 33, §658(c) (Supp. 1982).

Authority of Court or Review Body

When an administrative body determines an existing order should not be altered, it is binding unless a party, within 10 days, seeks a review by the court. If the administrative body determines that the existing order should be altered, it shall submit it recommendations to the juvenile court for its consideration. The court may conduct a review de novo of the determination on its own motion or motion of a party within 30 days of receipt of the determination. Vt. Stat. Ann. tit. 33, §658(e) (Supp. 1982).

Review shall determine whether child shall be returned home; continued in foster care for a specified period; remain in long-term foster care as a permanent plan or with a goal of independent living because of exceptional circumstances; or be considered for adoption or legal guardianship. Vt. Stat. Ann. tit. 33, §658(d) (Supp. 1982).

Decision Required

Review shall determine whether child shall be returned home; continued in foster care for a specified period; remain in long-term foster care as a permanent plan or with a goal of independent living because of exceptional circumstances; or be considered for adoption or legal guardianship. Vt. Stat. Ann. tit. 33, §658(d) (Supp. 1982).

At the time of the review, the court shall consider the best interests of the child in accordance with the following: the interaction and interrelationships of the child with the child's natural parents, the child's foster parents if any, the child's siblings and any other person who may significantly affect the child's best interests; the child's adjustment to home, school, and community; the likelihood that the natural parent will be able to resume his parental duties within a reasonable period of time; and whether the natural parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection in the child's welfare. Vt. Stat. Ann. tit. 33, §667 (Supp. 1982).

Procedure

Custodial agency must file a petition for a hearing with the court within sixteen months of initial foster care placement. The court shall set a hearing within sixty days. Va. Code §16.1-282 (C) (1982).

The court shall possess continuing jurisdiction over cases reviewed so long as the child remains in foster care placement or so long as conditions are imposed when the child is returned home. Va. Code §16.1-262 (E) (1982).

After the 16 month hearing, the court shall schedule a hearing periodically thereafter or within 30 days upon petition of a party entitled to notice when good cause is shown for the hearing. Va. Code §16.1-282 (E) (1982).

Coverage

Long-term involuntary placement cases. Long-term voluntary placement cases. Va. Code §16.1-241 (A) 1-2a., 4 (1982).

Termination of parental rights cases. Va. Code §16.1-279 (A) 5, (B) (1982).

Procedural Safeguards

Notice - The court shall provide notice of the hearing and a copy of the petition to the following, each of whom is entitled to participate in the proceeding; the child, if he or she is twelve years of age or older; the attorney representing the child as guardian ad litem; the child's parents and any person standing in loco parentis at the time the department obtained custody; the foster parents of the child; the petitioning board or agency; and such other persons as the court, in its discretion, may direct. No notification is required if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. Va. Code §16.1-282 (C) (1982).

The petition for 16 month foster care review shall include a copy of the foster care plan previously filed, the current address of the child's parent or person standing in loco parentis; the placement provided while in foster care and programs offered the child and parent/person standing in loco parentis; the nature and frequency of parent-child contacts; manner in which foster care plan has been complied with and extent to which goals have been met; disposition sought and grounds; if continued foster care is recommended, the role of the current foster parents in the future planning for the child. Va. Code §16.1-282 (B) (1982).

GAL - The court shall appoint an attorney to act as GAL to represent the child any time a hearing is held to review the foster care plan or review the child's foster care status. Va. Code §16.1-281 (1982).

Appeal - Orders may be appealed. Va. Code §16.1-262 (C), (D) (1982).

Scheduling

Custodial agency must file a petition for a hearing with the court within sixteen months of initial foster care placement. The court shall set a hearing within sixty days. Va. Code §16.1-282 (1982).

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After the 16 month hearing, the court shall schedule a hearing periodically thereafter. The court must schedule a hearing within 30 days upon party petition if good cause is shown for a hearing. Va. Code §16.1-282 (E) (1982).

Authority of Court

At the 16 month hearing, the court may order any disposition available at the initial hearing. The court may make any of the following orders to protect the welfare of the child: 1) order public agencies to provide services and information they are required by law to provide; 2) return home subject to conditions and limitations; 3) after a finding that there is no less drastic alternative, transfer legal custody to a qualified relative, or an agency or facility; 4) transfer legal custody and order the parent, guardian, legal custodian or other person standing in loco parentis to participate in such services and programs or to refrain from any conduct as the court may prescribe; 5) the court may terminate the rights of such parent, guardian, legal custodian or other person standing in loco parentis pursuant to statute. The same options are available when a child is placed in foster care through a court approved entrustment agreement. Va. Code §§16.1-279 (A)-(B), -282, -283 (1982).

The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in foster care placement or, when a child is returned to his or her prior family subject to conditions imposed by the court, for so long as such conditions are effective. Va. Code §16.1-282 (E) (1982).

Decision Required

At the conclusion of the hearing, the court shall, upon the proof adduced and in accordance with the best interests of the child, enter an appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the original hearing. These include return home, foster care placement, provision of services, and termination of parental rights. Va. Code §16.1-282 (D) (1982).

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Procedure

Court must review status of all dependent children every six months at a hearing to determine whether court supervision should continue. Wash. Rev. Code Ann. §13.34.130(3) (Supp. 1982).

Where parental rights have been terminated without either adoption or appointment of a general guardian for the child, the court shall review the case every six months until a decree of adoption is entered. Wash. Rev. Code Ann. §13.34.210 (Supp. 1982).

Coverage

Involuntary placement cases. Wash. Rev. Code Ann. §13.34.030(2) (Supp. 1982).

Post-parental right termination cases. Wash. Rev. Code Ann. §13.34.210 (Supp. 1982).

Procedural Safeguards

Review must be by a hearing. Wash. Rev. Code Ann. §13.34.130(3) (Supp. 1982).

Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder. Wash. Rev. Code Ann. §13.34.090 (Supp. 1982).

Counsel - At all stages of a proceeding at which a child is alleged to be dependent pursuant to statute, the child's parent or guardian has the right to be represented by counsel appointed for him or her by the court. Wash. Rev. Code Ann. §13.34.090 (Supp. 1982) (General).

Child's Attorney/Guardian Ad litem - The court, at any stage of a proceeding under this chapter, may appoint an attorney and/or a guardian ad litem for a child who is a party to the proceedings. A party to the proceeding or the party's employee or representative shall not be so appointed. Such attorney and/or guardian ad litem shall receive all notices contemplated for a parent in all proceedings under this chapter. Wash. Rev. Code Ann. §13.24.100 (Supp. 1982).

A report by the guardian ad litem to the court shall contain, where relevant, information on the legal status of a child's membership in any Indian tribe or band. Wash. Rev. Code Ann. §13.24.100 (Supp. 1982) (General).

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Scheduling

Court must review status of all dependent children every six months to determine whether court supervision should continue. Wash. Rev. Code Ann. §13.34.130(3). (Supp. 1982).

After termination of parental rights, the court shall review the status of a child every 6 months until an adoption decree is entered. Wash. Rev. Code Ann. §13.34.210 (Supp. 1982).

When parental rights have been terminated without adoption or court

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appointment of a general guardian for the child, the child shall be returned to the court for entry of further orders for child's care, custody and control, and the court shall review the case every six months until a decree of adoption is entered. Wash. Rev. Code Ann. §13.34.210 (Supp. 1982).

Authority of the Court or Review Body

If a child is not returned home, the court shall establish in writing: what services have been provided to or offered to the parties to facilitate reunion; the extent to which the parents have visited the child and any reasons why visitation has not occurred or has been infrequent; whether the agency is satisfied with the cooperation given to it by the parents; whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered, and when return of the child can be expected. The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed. Wash. Rev. Code Ann. §13.34.130(3)(a)-(c) (Supp. 1982).

Decision Required

A child shall be returned home at the review hearing unless the court finds that the reason for removal still exists. Wash. Rev. Code Ann. §13.34.130(3) (Supp. 1982).

If a child is not returned home, the court shall establish in writing: what services have been provided to or offered to the parties to facilitate reunion; the extent to which the parents have visited the child and any reasons why visitation has not occurred or has been infrequent; whether the agency is satisfied with the cooperation given to it by the parents; whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered; and when return of the child can be expected. The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed. Wash. Rev. Code Ann. §13.34.130(3)(a)-(c) (Supp. 1982).

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Procedure

If an agency has had legal or physical custody of a child for 20 months and the child has not been placed in permanent foster care, an adoptive home or with the natural parent, the state department shall file a petition with the court stating the child's situation, present foster care arrangements and the plan for pursuing permanent arrangements. The court may hold a hearing on the petition in chambers. If the child remains in the Department's custody, the Department shall file a supplementary petition every 18 months unless the child is placed in permanent foster care, adopted or returned home. W. Va. Code §49-6-8 (1980).

Coverage

All children in the legal or physical custody of the agency for 20 or more months. W. Va. Code §49-6-8 (1980).

Procedural Safeguards

Notice - The court may schedule a foster care review hearing in chambers giving notice and the right to be present to: the child, if twelve years of age or older; the child's parents; the child's foster parents; and such other persons as the court may in its discretion direct. W. Va. Code §49-6-8 (a) (1980).

Petition - The petition must state the child's situation, the efforts that have been made to place the child in a permanent situation, the present foster care arrangements and the plans for pursuing permanent arrangements. W. Va. Code §49-6-8 (1980).

Right to Counsel - The child and his parents, his custodian or other persons standing in loco parentis to him, shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. If the child or other parties have not retained counsel and the child and other parties cannot pay for the services of counsel, the court shall, by order entered of record, at least ten days prior to the date set, appoint an attorney or attorneys to represent the child and other party or parties or so inform the parties. Under no circumstances, may the same attorney represent both the child and the other party or parties, however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children. W. Va. Code §49-6-2 (a) (1980) (general provision).

Opportunity to Present and Question Witnesses - [T]he party or parties having custody of the child shall be afforded a meaningful opportunity to be heard including the opportunity to testify and to present and cross-examine witnesses. W. Va. Code §49-6-2 (c) (1980) (general provision).

Court Record - A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. Where relevant, the court shall [illegible] Department efforts to remedy the alleged circumstances. W. Va. Code §49-6-2 (1980) (general provision).

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After the court's determination, an inquiry must be made whether the parents or guardian wish to appeal and the response transcribed although a negative response does not waive the right to appeal.

A free transcript is provided for appeal by indigent parents. The evidence shall be transcribed and made available to the parties and their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person, if an affidavit is filed stating person cannot pay therefor. W. Va. Code §49-6-2 (1980) (general provision).

At the conclusion of the hearing the court shall enter an appropriate order of disposition. W. Va. Code §49-6-2 (1980).

Scheduling

After 20 months of legal or physical custody, the state department shall petition the court which may schedule a hearing. If the child remains in the Department's custody, the Department shall file a supplementary petition every 18 months unless the child is placed in permanent foster care, adopted or returned home. W. Va. Code §49-6-8 (1980).

Authority of Court

At the conclusion of the review hearing, the court shall enter an appropriate order of disposition for the child. These can include: 1) dismissal of petition, 2) referral to community agency, 3) placement of child at home under agency supervision, 4) order of terms of supervision, 5) placement in foster care, 6) termination of parental rights. There is also a statutory provision for "permanent foster care." W. Va. Code §§49-6-5, 49-6-8 (1980).

The court shall possess continuing jurisdiction over cases reviewed for so long as a child remains in temporary foster care or when a child is returned to the child's natural parents subject to conditions imposed by the court, for so long as the conditions are effective. W. Va. Code §49-6-8 (a) (1980).

Decision Required

At the conclusion of the review hearing the court shall, in accordance with the best interests of the child, enter an appropriate order of disposition. W. Va. Code §§49-6-8 (a) (1980).

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Procedure

All disposition orders terminate at the end of one year unless the judge specifies a shorter time; extension order also expires at the end of one year unless a shorter time is specified. Wis. Stat. Ann. §48.355 (West Supp. 1982).

The agency, parent, guardian or custodian, child or court may move for an extension of the order. The order may be extended pursuant to a hearing before the judge. Wis. Stat. Ann. §48.365 (West Supp. 1982).

Coverage

Voluntary placements not included because they cannot exceed 6 months. Wis. Stat. Ann §48.63 (West Supp. 1982).

Procedural Safeguards

When a child is placed out of the home, the judge must warn parents of any grounds for termination of parental rights which may be applicable. In addition, any written order placing the child out of the home must specify the grounds for termination. Wis. Stat. Ann. §48.356 (West Supp. 1982).

Hearing - An order may be extended only pursuant to a hearing before a judge. Wis. Stat. Ann. §48.365(2) (West Supp. 1982).

Notice - Notice of a hearing to extend a dispositional order must be given to the child or child's GAL or counsel and to the parent, guardian, legal custodian and all parties present at the original hearing. Wis. Stat. Ann. §48.365 (West Supp. 1982).

Report - A signed court report by the person or agency primarily responsible for service provision shall be filed containing a statement as to the extent the disposition has been meeting the objectives of treatment, care or rehabilitation as specified in the judge's findings of fact; an evaluation of child's adjustment to placement; progress made; anticipated future planning for the child; efforts made by all parties towards returning the child to parents; including parental efforts to remedy factors contributing to transfer of custody, and an explanation of why return home is not feasible. Wis. Stat. Ann. §48.365(2)(b) (West Supp. 1982).

Any party may present evidence relevant to the issue of extension. The appearance of the child may be waived by consent of the child, counsel or GAL. Wis. Stat. Ann. §48.365(2)(c) (West Supp. 1982).

The judge shall make findings of fact and conclusions of law based on the evidence. An order must be issued. If the court is unable to hold a hearing on a motion to extend an order prior to its expiration the court may extend the order for a period of not more than 30 days. Wis. Stat. Ann. §48.065 (West 1979) (general provision).

Any decision of a juvenile court commissioner shall be reviewed by the judge upon the request of any interested party. Wis. Stat. Ann. §48.065 (West 1979) (general provision).

Counsel - Children alleged to be in need of protection or services, may be represented by counsel at the court's discretion except children 15 years or older may waive counsel. Wis. Stat. Ann. §48.23 (West Supp. 1982).

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If the petition is contested, the court may not place a child outside child's home unless the child and non-petitioning parent are represented by counsel at the fact-finding and subsequent hearings. If the petition is not contested, the court may not place the child outside child's home unless the child and non-petitioning parent are represented by counsel at the placement hearing. The court may appoint a GAL rather than counsel to represent a child under 12. A child 15 years or older and a parent may waive counsel. Wis. Stat. Ann. §48.23 (West Supp. 1982).

At any time, upon request or on its own motion, the court may appoint a GAL for the child or any party unless the child or party wishes to retain counsel of party's own choosing. Wis. Stat. Ann. §48.23 (3) (West Supp. 1982).

The court shall appoint counsel for any child alleged to be in need of protection or services through neglect or physical or sexual abuse or who is suffering emotional damage except that the court may appoint a GAL for a child under 12 years. Wis. Stat. Ann. §48.23 (3m) (West Supp. 1982).

In any situation where the child or parent is entitled to representation by counsel and it appears child and/or parent is unable to afford counsel, the court shall refer the parent and/or child to the authority for indigency determinations. Wis. Stat. Ann. §48.23 (4) (West Supp. 1982).

Whenever a judge orders a child placed outside the home because the child is in need of protection or services the judge shall orally and the written order shall inform the parents who appear in court of any grounds for terminating parental rights which may be appropriate. Wis. Stat. Ann. §48.356 (West Supp. 1982).

Ruling

The parent, child guardian, or person bound by a disposition order or the court on its own motion may request an extension of the order. Wis. Stat. Ann. §48.365 (West Supp. 1982).

All orders terminate at the end of one year unless the court orders a shorter period of time. The agency, court, child, parent, guardian or custodian may request an extension. The judge shall determine which dispositions are to be considered for extensions. Wis. Stat. Ann. §48.355(4); .365(4)-(5) (West Supp. 1982).

Authority of Court

Following a hearing on extension of an order, the court may issue a new disposition order placing the child out of the home. Wis. Stat. Ann. §§48.355, .365 (West Supp. 1982).

Decision Required

The court shall make findings of fact and conclusions of law as to extension of disposition. If an order is to be extended, the court must issue a further dispositional order covering the agency primarily responsible for services mandated, the name of any legal custodian and placement, and the conditions necessary for the child to be returned home, including changes in the conduct of the parent or the child or the nature of the home. Wis. Stat. Ann. §§48.355, .365 (West Supp. 1982).

Any written court order which places a child outside child's home shall notify the parents of the grounds for termination and parental rights. Wis. Stat. Ann. §48.356 (West Supp. 1982).

Procedure

There is no review or dispositional hearing procedure specified in Wyoming statutes.

Procedural Safeguards

The court may appoint a GAL for a child who is a party if the child has no parent, guardian or custodian appearing on child's behalf or if the interests of the parent, guardian or custodian are adverse to the child's best interests. Wy. Stat. §14-6-216 (1978) (general provision).

At their first appearance, the court shall advise the child and parent, guardian or custodian of their right to counsel at every stage of the proceedings, including appeal. The court will appoint counsel for the child upon request if the child and child's parents, guardian, custodian or other person responsible for the child's support is unable to obtain counsel due to insufficient financial means. The court may appoint counsel "for any person when necessary in the interest of justice." Wy. Stat. §14-6-222 (1978) (general provision).

A party to a proceeding under the juvenile court act is entitled to remain silent and to confront and cross-examine witnesses, introduce evidence, present witnesses, subpoena witnesses and issue of process by the court to compel appearance of witnesses or the production of evidence. Wy. Stat. §14-6-223 (1978) (general provision).

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